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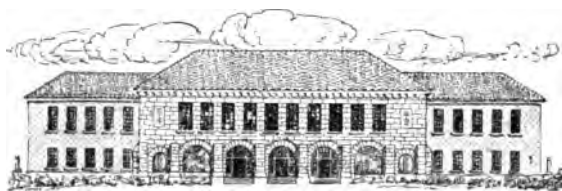
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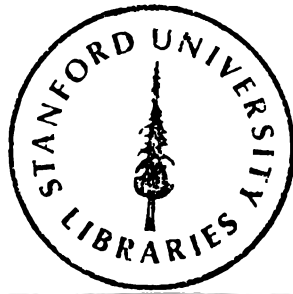
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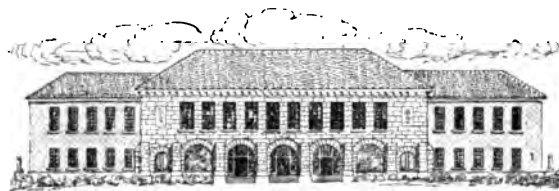
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# The Concept of Equality

In the Writings of

Rousseau, Bentham, and Kant

BY

Alfred Tuttle Williams, Ph. D.

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6/1/19

## The Concept of Equality in the Writings of Rousseau, Bentham, and Kant

### I. CONCEPTIONS OF EQUALITY FROM PLATO TO LOCKE

In his essay on Equality, Mathew Arnold gives to Menander credit for the first advocacy of equality as a social ideal. The deep faith which Arnold himself professes for equality and democracy is especially significant when we remember two facts concerning him: he had an unbounded admiration for Greek culture, a product which had become possible only through an inequality which allowed of a leisure class; and secondly, no one was better aware than he of the ignorance and shortcomings of the mass of the people, whom he dubbed the 'the populace.' There is, however, another side to Arnold's character: he was a Hebrew as well as a Greek, that is he had the Hebraic appreciation of the worth of man as man. If culture is a possession to be prized according to the Greek idea, then is every man worthy of it, because in the Hebraic idea every man is precious, and therefore, Arnold concluded, should be given the opportunity to acquire culture. He denied that such opportunity was possible under the conditions of social inequality existent in his day and country.

Inequality presented to Arnold the spectacle of an upper class characterized by a splendid materiality which is worshipped by an envious and brutalized lower class. "Our inequality," he says, "materializes our upper class, vulgarizes our middle class and brutalizes our lower class."<sup>1</sup> When one portion of society lives in splendor and culture, a condition which the bulk of humanity cannot hope to reach, the effect is to make the latter despondent and inert, knowing that the best condition of improvement and

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<sup>1</sup>Essay on *Equality*.



culture attainable by them is disesteemed and despised by the fortunate aristocracy. While to live in a society of equals is to cause a man's spirits to expand and his faculties to grow. Equality, he says, is a necessary avenue to the 'humanization of man in society.' For the attainment of the desired equality the two means given as most important are: a legislative act curtailing the freedom of bequest, and the education of all the people to a plane of culture.<sup>1</sup>

Another literary idealist<sup>2</sup> dreams of an equality which will be the basis of the future society. To men in good society, he says, superiority and inferiority are intolerable. Good society requires that all meet on the footing of equality. When you come into a group as an invited guest you lay aside what claims you may have to distinction or superiority and take an attitude of equality with the other guests, because 'good society' so requires it. The equality of the future will be the enlargement of 'good society' to the whole of the human race.

Humanity is always seeking its level and the aristocrats, the highest equals, says the same writer, have no less the desire to feel themselves on a plane of equality than have the plebeians. In fact it was among the *aristos* that the recognition of an equality first became necessary. Not, of course, through a mere desire for social companionship but as a means of security for their class against the rest of the population. "The ideal of equality," says Professor Ritchie, "is an inheritance from the inequalities of ancient societies; it is an idea of a peerage, an order or caste of nobles who recognize each other as in some respects and for some purposes, equals, while asserting their superiority to the rest of the nation or the rest of the human race. . . . It was *in contrast* to the subject and the slave that men first felt themselves equal and free."<sup>3</sup>

Equality was thus in the beginning a force which made for cohesion. Some idea of inequality is involved in all conceptions of justice, and only when the terms seem just to himself will a man enter voluntarily into group relationships. The acknowledgment of the other as an equal is a means to co-operation whether among the Greek chieftains of the Homeric age or the kings of

<sup>1</sup>Essays on *Equality and Democracy*.

<sup>2</sup>W. D. Howells, *Equality as a Basis of Good Society*, Century, Vol. 29.

<sup>3</sup>*Natural Rights*, Ch. XII.

Europe in the third Crusade. Aristocracies less glorious than these have laid aside the petty distinctions which made them unequal in order to maintain themselves the masters of a population of serfs.

The ideas of equality and freedom at first the exclusive possession of an aristocratic society, spread outward so as to include larger groups, until in the eighteenth century it was declared that, 'all men are by nature free and equal.' The modern doctrine of equality is the result of a growth which may be said to have reached a culmination in the eighteenth century. It is the purpose of the present essay, after considering briefly conceptions of certain phases of equality previous to this period, to make some study of the idea as contained in the works of three writers, Rousseau, Bentham, and Kant, men whose opinions present wide differences, yet all of whom seem to belong peculiarly to the eighteenth century, and each of whom has left a deep impression upon later thought.

The Republic of Plato is the ideal exposition of a doctrine of equality based on a functional idea, i. e., all perform the functions for which nature has fitted them in common subordination to the state. When we consider the individuals in a state we find them to be of diverse talents and capacities. At the creation of men, so the story goes, it pleased the gods to mix different elements into their composition. Gold is taken to represent exceptional wisdom and qualifies its possessor to become a ruler or guardian. Silver stands for courage, the quality necessary for the military order. Iron and copper are not terms representing elements disparaging to the persons possessing them.<sup>1</sup> Negatively they imply only the lack of that exceptional wisdom necessary to the ruler or exceptional courage necessary to the soldier. Positively they imply the capacities to be producers and traders. The greatest efficiency in production and trade is attained by a minute division of labor, in which, too, everyone, even the humblest, can find a useful occupation in accordance with his capacity.

Plato makes the utmost of the natural capacity. "No two persons are born exactly alike, but each differs from each in

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<sup>1</sup>It is true that Plato shared in the Athenian contempt for the occupations of the trader and artisan; nevertheless he recognized them as indispensable to the state.

natural endowments, one being suited for one occupation and another for another. . . . . All things will be produced in superior quantity and quality and with greater ease when each man works at a single occupation in accordance with his natural gifts."<sup>1</sup>

While Plato's state is aristocratic it is an aristocracy based entirely upon talent. A child born into the artisan class who shows the promise of leadership must be raised to the guardian rank, just the same as the children of guardians who have not inherited the talents of their parents, must take their place among the artisans. When Adeimantus makes the objection that the austerity and frugality of the life prescribed for the guardians cannot allow them much happiness, Socrates replies that the object is not that they should be happy, but that they should be good governors. "Our object in the construction of a state is not to make any one class pre-eminently happy, but to make the whole state as happy as it can be made." "In constructing a statue," he continues, "do not suppose that we ought to make the eyes so beautiful as not to look like eyes, . . . but observe whether by giving to every part what belongs to it, we make the whole beautiful."<sup>2</sup> The harmonious operation of the various parts, each attending to the work that he has to do, characterizes the just state.

Herbert Spencer thought that the conception of justice in Plato's republic was founded on the idea of inequality.<sup>3</sup> The opposite contention can be much better maintained. Inequality should not be confused with diversity in talent. Equality tends towards cohesion; likewise is diversity in function and capacity necessary to cohesion and unity. These two statements are entirely consistent if difference in talent is not confused with inequality. In Plato's state each performs service according to his powers and receives rewards according to his needs. Unusual powers in an individual do not constitute a claim for an unequal share of happiness, since all powers exist, not primarily to benefit the individual, but for the use of the state. If his own happiness is the chief aim of each individual and if a state governed on the *laissez-faire* principle is the best means of each attaining his

<sup>1</sup>*Republic*, Bk. II.

<sup>2</sup>*Republic*, Bk. II.

<sup>3</sup>Essay on *Justice*, Ch. V.

happiness, Spencer is right in pointing out the inequality of the Republic. If, however, as Plato says, the aim is not primarily happiness but justice, and if the good of man consists fundamentally in self realization, i. e., in developing the capacities of each to contribute to a common good, then Plato's doctrine is eminently one of equality, since it affords equal opportunity to all to function according to their talents.

The obvious objection to the *Republic* is that the approach is entirely from the side of the state. It is assumed that we can know just what are a man's talents, and what is the common good, and therefore can parcel out to each individual his duties; the ideal is therefore static. In fact it is a duty of the guardians to forbid innovations because they might result in lawlessness.<sup>1</sup> Evidently there is little room left for the play of individual initiative. This weakness which characterizes the communism described in the *Republic* is not, however, found in the *Laws* where the point of departure is the individual.

"All men," says Aristotle, "think justice to be a sort of equality; . . . and that equals ought to have equality."<sup>2</sup> A difficulty arises in discerning what are the qualities in men which determine their claims to superiority or to equality. Aristotle believed in the principle that rank be given according to desert. "When a number of flute players are equal in their art, there is no reason why those of them who are better born should have better flutes given to them; for they will not play any better on the flute, and the superior instrument should be reserved for him who is the superior artist."<sup>3</sup> A man's claims to consideration must be constituted in the capabilities he possesses for obtaining certain valued ends. Distinguished birth, wealth, and virtue, all have certain claims to superiority in the exercise of political power, only because these elements contribute to make a better ruler.

Aristotle's justification of slavery is not inconsistent with the definition of justice as a sort of equality. That there should be a slave class is intended by nature. The higher must always rule the lower, as in the rule of the soul over the body, or of the rational element in man over the passions. Tame animals are better off when ruled by man because they are then preserved.

<sup>1</sup>Bk. IV.

<sup>2</sup>*Politics*, III.

<sup>3</sup>*Ibid.*



The right to rule is centered in intelligence and if there be no inner intelligence, rule should emanate from the intelligence of another. This is the relation of master and slave because the latter is wanting in reason, and it is better for him as for all inferiors to be under the rule of a master.<sup>1</sup> The master profits by the relation because in arranging his household he finds need for certain instruments for the accomplishment of his work. He needs instruments both lifeless and living. The slave is a mere possession as is a machine and lives only to serve his master. His end is not in himself but always in his master, to whom he wholly belongs. Generally speaking the children of slaves are also slaves, and those of freemen are gifted with the reason which makes their parents free. Aristotle admits, however, that nature sometimes makes mistakes and puts the soul of a freeman into the body of a slave and the soul of a slave into that of a freeman. Indeed, because it is so difficult to determine just who are by nature slaves and free, Aristotle makes only the general distinction, that the Greeks being a people of superior intelligence should never be enslaved, a claim which is, however, denied to the barbarians. The ability to exercise reason is the differentiating principle. In Aristotle therefore as in Plato, inequalities of rank have their basis in supposed inequalities in nature.

After Plato and Aristotle came a decline of public life in Greece and of intellectual interest in the state, accompanied by an increasing interest in the personality and private life of the individual.<sup>2</sup> The dignity given to the individual soul by the Stoic School had its basis in a comprehensive philosophy. According to the Stoic pantheism the earth and the whole universe are filled with an animating soul. Of this the human soul is a part, and it bears, too, a special relationship to the Divine Being by the possession of reason—a relationship which becomes closer in proportion as the divine element, reason, is allowed greater play.<sup>3</sup> Reason, however, is not as in Aristotle, a faculty which is the possession of a class. It is a divine endowment common to all and binding all into a connected whole. The life of reason does not depend upon external circumstances and may be lived by the slave as well as his master, but slavery as an institution was condemned by

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<sup>1</sup> *Politics*, I.

<sup>2</sup> Zeller, *Stoics, Epicureans and Sceptics*, Ch. XII.

<sup>3</sup> *Ibid.*, Ch. IX.

Stoicism. Thus mankind is a brotherhood forming one social unit. Justice and mercy should characterize men's social relationships. "Treat men, since they have reason," says Marcus Aurelius, "as members of the same society."<sup>1</sup> "Though we are not just of the same flesh and blood, yet our minds are nearly related, being extracted from the Deity."<sup>2</sup> The assumption of an equality based on a common divine nature which brought all mankind into a universal brotherhood tended to break down national boundaries and the ordinary civil relationships and substitute a citizenship of the world. "Under the particular distinction of Antoninus, Rome is my town and country; but consider me as a man in general, and I belong to the corporation of the world."<sup>3</sup>

The ethical equality underlying Stoicism had an important bearing upon Roman Law and led to the declaration of the Roman jurist that all men are by nature equal.<sup>4</sup> Few departments of Roman jurisprudence were not to some extent affected by the catholic and humane principles of Stoicism.<sup>5</sup> The Stoic asserted the existence of a supreme law in nature which afforded him a norm for the determination of his conduct. Natural law became the foundation of human legislation. "To the Stoics and Roman lawyers," says Lecky, "is mainly due the recognition of a law of nature above and beyond all human enactments, which has been the basis of the best moral and of the most influential though most chimerical political speculation of later ages."

The Christian doctrine of the preciousness of every human soul had its beginning in the Hebrew belief in the worth of man. Primarily it was not every man but every member of Israel. The Hebrew had a delicate sense of his personality which led to an emphasis upon the personal virtues of purity, justice, and mercy. The man thus became a moral being and as such had moral worth. This conception was extended throughout the group since the Hebrews were knitted together by strong racial feelings in the consciousness of the common fatherhood of the God of Israel. Morality was intended to be the constitutional and municipal law

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<sup>1</sup> *Meditations*, Bk. IV.

<sup>2</sup> *Ibid*, Bk. II.

<sup>3</sup> *Ibid*, Bk. VI.

<sup>4</sup> Ulpian *Digest*, lib. I., tit. 17-32.

<sup>5</sup> Lecky, *History of European Morals*, Vol. 1, p. 315.



of the state; therefore moral equality tended to preserve a social equality.

The most lasting influence, however, on the doctrine of equality had its rise with the advent of Christianity. The enthusiasm for righteousness held by the early Hebrews had given place to a period of formalism, the natural results of an attempt to externalize moral sentiments. Formalism can never long satisfy the human spirit and results in oppression and pessimism combined with a desire for redemption. This feeling was intensified among the Hebrews by national calamity. When the redemption came in the form of a Christian doctrine, it was not for the Hebrew race but for all men. All were the children of a common Father and all had the capacities allowing of salvation. Christ's practical teaching tending to the exaltation of the poor; his use of such phrases as, "the least of these, my brethren," such texts as, "He that is greatest among you let him be as the younger; and he that is chief, as he that doth serve," and of such parables as that of the Lost Sheep; all were emphatic declarations of the inherent worth of every human soul and have had a powerful influence in establishing at least a spiritual equality among Christian nations.

Christian ideas became inoculated into the social life far more thoroughly than the morality of Stoicism had been able to influence Rome. While the latter appealed to a type of men strong in character, its demand for an austere life without the promise of a future reward did not allow of an appeal to the mass of the people. Christianity on the contrary appealed especially to the oppressed and the lowly and held out the bright hope of a future happiness. The emphasis upon the worth of the individual gave a new status to women and children and tended to a mitigation of slavery. Infanticide could no longer be tolerated since an infant, no more the mere chattel of its father, was understood to be an immortal human soul. The emphasis upon feminine virtues gave a dignity to woman and made her morally the equal of man. It was a dignity however which waned under the ascetic influences of the Middle Ages until revived again through chivalry.

The Christian emphasis upon equality was continued in the Mediæval Church in more ways than one. The means to salvation, the use of the sacraments, and obligatory attendance at Church functions were absolutely alike for all classes. In spite of great differences in social and political rank the lesson was

not forgotten that the most lowly upon earth may not be the least in the Kingdom of Heaven. Furthermore, the ecclesiastical hierarchy kept open the possibility of a career to talent regardless of distinguished birth. The son of a peasant was no less eligible than a noble to any office in the Church, even that of Cardinal or Pope.

In the system of mediæval jurisprudence the position of the individual was determined by status. Each had a place in the feudal hierarchy, the secular complement of the ecclesiastical system. The serf, while not a freeman, was no longer a slave, and existed in a contract relation with his master; i. e., he was recognized as having a right to protection in exchange for his services and was regarded as a man before the law.

The transition from the mediæval to the modern world in the Renaissance is very well illustrated in its philosophical correlate, the victory of nominalism over realism. Realism, the doctrine that universals have a reality denied to particulars and that the latter have existence only by participation in the former, was typical of the social life of the Middle Ages. Nominalism in its assertion that what is real is the individual, was only giving expression in philosophical language to the general awakening of individual life in the Renaissance. Equality had little place in the age of Machiavelli unless it be seen in the breaking down of caste and of the conventional restraints of the past. Politically a premium was placed upon personality but not of a high type.<sup>1</sup> In effecting his ends the individual acknowledged no barriers other than those of expediency. It was the type of an individual just become conscious of his life and power, without having begun, to use a modern term, to become socialized.

Hobbes, too, conceived of man as essentially individualistic and therefore unsocial in his makeup. Before the formation of a state by contract the life of man was "solitary, poor, nasty, brutish and short."<sup>2</sup> Men were, however, equal in their powers of body and mind. "Nature has made men so equal in the faculties of the body and mind, as that though there be found one man sometimes manifestly stronger in body or of quicker mind than another; yet

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<sup>1</sup> Machiavelli, *the Prince*.

<sup>2</sup> *Leviathan*.



when all is reckoned together, difference between men is not so considerable, as that one may claim to himself any benefit to which another may not pretend as well as he."<sup>1</sup> Rights were determined only by powers so that each one had an equal right to everything, a situation which resulted in a *bellum omnium contra omnes*. Against such a condition of affairs reason revolted and men came together to preserve peace through the establishment of a state. All enter into an agreement that each shall surrender all his rights to a supreme sovereign whom all agree to implicitly obey; and because each gives up all his rights the conditions are the same for all and an equality is again reached combined with peace and order.

Individual men in a state of nature is the point of departure for Locke as it was for Hobbes. This state is conceived as one of perfect freedom and also of equality, "wherein all the power and jurisdiction is reciprocal, no one having more than another, there being nothing more evident than that creatures of the same species and rank, promiscuously born to all the same advantages of nature and the use of the same faculties should also be equal among one another without subordination or subjection."<sup>2</sup> Locke's philosophy was widely read not only in England but in the American colonies. The dictum that 'men are by nature free and equal,' which was accepted by the American Fathers as a self-evident proposition, may be traced immediately to Locke. Locke was read in America for many years before Rousseau was known.

The state of nature is not as Hobbes conceived it, a state of war; it is rather a state of peace governed by a law of reason which tends towards justice and charity. "The state of nature has a law of nature to govern it which obliges everyone, and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his body, health, liberty or possessions."<sup>3</sup> These are considered men's rights and if one invade the rights of another and thereby violate the law of nature 'which willed the peace and preservation of all mankind,'<sup>4</sup> everyone has a right to assist in punishing the transgressor; a right that was well known to Cain when he cried out after the murder of his brother, "Everyone that

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<sup>1</sup> *Ibid.*

<sup>2</sup> *Civil Government*, Ch. II.

<sup>3</sup> *Ibid.*, § 6.

<sup>4</sup> *Ibid.*, § 7.

findeth me shall slay me," because it is written in the hearts of mankind.<sup>1</sup> Kant has been anticipated by Locke in grounding laws of right in human nature; because to Locke laws must conform to a rule of reason, and crime consists "in violating the laws, and varying from the right rule of reason, whereby a man so far becomes degenerate and declares himself to quit the principles of human nature and to be a noxious creature."<sup>2</sup>

The state of nature, however, wherein each has a certain legislative and executive power as well as being judge of his own case, carries with it such inconveniences as make necessary the formation of a Civil State. A political or civil society is formed when any number of men unite into one society, each agreeing to resign the executive power he held in nature in favor of the public. In the civil society so constructed each binds himself to be ruled by the determinations of the majority.<sup>3</sup> One of the chief needs for a civil government is in the regulation and preservation of property. The right to property is based upon labor, since only he may appropriate a portion of goods out of the state of nature and call it his own who has 'mixed his labor with it.'<sup>4</sup> Hence cultivating the land and having dominion over it are joined together. Furthermore, a man should have as much as he can make use of and not more than that.

The doctrines of the Declaration of Independence, according to Professor Ritchie,<sup>5</sup> resemble far more closely the views of Locke than those of Rousseau. He calls attention to the fact that in places even the phraseology is the same.<sup>6</sup> On the other hand Sir Henry Maine<sup>7</sup> alludes to the undoubted influence apparent in the writings of Thomas Jefferson of the semi-juridical, semi-popular opinions that were current in France.

The genesis of these opinions centering as they do about a law of nature, is traced back to Stoicism and Roman law. In the days of the Roman republic there developed besides the Civil Law, the *Jus Gentium* or Law of all the nations, a necessary result of the contact and conflict between Rome and other

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<sup>1</sup> *Ibid.*, § 11.

<sup>2</sup> *Ibid.*, § 10.

<sup>3</sup> *Ibid.*, § 89-86.

<sup>4</sup> *Ibid.*, § 27.

<sup>5</sup> *Natural Rights*, p. 6.

<sup>6</sup> See Locke, *Civil Government*, II., p. 225.

<sup>7</sup> *Ancient Law*, Ch. IV.

Rousseau's chief indictments against the arts and sciences are: (1) An evil effect upon their followers, whom in his experience at Paris he found to be egotistic and clever without being honest and sincere. (2) Science and Art had brought no social benefits and, indeed, were anti-social, because they had introduced social distinctions and had thus augmented the artificial inequality that had grown up in human society.

Rousseau does not overlook the natural differences among individuals. In the *Discourses on the Causes of Inequality* he distinguishes between two types, (1) inequality in physical and mental endowment, and (2) social and political inequality; i. e., inequality in riches, honor, and privileges which some enjoy to the detriment of the rest. Inequality of the first order is established by nature and existed among men in their primitive state and did not make them less happy, because each lived in isolation. Men gradually came together for joint labour in overcoming some external conditions, therefore they began to measure one another. Through accident, tools were invented for metal-working and tillage, and the development of these arts led to the holding of private possessions, a step which brought into prominence the natural inequalities among men and finally resulted in the great distinction between rich and poor. In its degeneration the race is conceived to have passed through three stages:

(1) The appropriation of private property. This evil began when the first individual built a fence around a piece of land and called it his own. The harm thus begun was accentuated by a growing division of labor.

(2) The institution of government, which was a device of the rich and strong to protect their property against the poor, and from this there resulted the condition of—

(3) Slavery for the great mass of the people.

The *Social Contract* evinces a marked change of attitude. Government is no longer condemned and a plan is laid for the construction of a just government. The existence of private property is assumed, and, in fact, is necessary to the maintenance of equality. It is just because the circumstances of things tend constantly to destroy equality that the state should endeavor to maintain it. A system of legislation should have as its main objects liberty and equality. The *Social Contract* is not given as

descriptive of primitive society, but tells how society ought to arise. Rousseau takes as his fundamental problem to find a form of association which defends and protects, with the force of all, the person and property of each associate, and whereby the individual in surrendering himself to the organization sacrifices none of his individuality and gets in return the support that comes from the organization.<sup>1</sup> The solution of the problem is found in the notion of the general will, the "public person" or body politic.

The following analysis may be given as the essence of the social contract: Each places in common his person and his powers under the direction of the general will, and in return each receives every member as a part of the whole. The conditions are the same for all, so that individual liberty is not infringed upon; and since everyone gives up to all, each gains for his protection the equivalent of what he loses, and even more, too, because he gives up the power of one but gets back the protection of the entire number in the social compact.<sup>2</sup> //

The body thus constituted by convention is the sovereign. Each individual has a double relation, viz., he is a member of the sovereign, with definite relations towards individuals, and is also as an individual a member of the state and subject to the sovereign. It should be noted too that sovereignty is inalienable, since it is the exercise of the general will, and will is something which cannot be surrendered to another. Moreover, sovereignty is indivisible and the rights which individuals, as individuals, claim must be kept subordinate to the general will.

In the doctrine of a general will we have a social conception. It involves the notion of a common good. If we eliminate the strictly private interests or ends in which individuals differ, we still find an interest common to all, and this gives us the notion of a common good—the good of the community as such. To attain this common good is the desire of the *general will*. The significant fact in this conception is that it involves a social person. The introduction of a social individual makes Rousseau an inno-

<sup>1</sup>*Social Contract*, Bk. I., Ch. 6.—Trouver une forme d'association qui defende et protege de toute la force commune la personne et les biens de chaque associé, et par laquelle chacun, s'unissant à tous, n'obéisse pourtant qu'à lui-même, et reste aussi libre qu'anparavant.

<sup>2</sup>*Social Contract*, Ch. VII.

vator in eighteenth century thought. Eighteenth century writers regarded their problem as one of detachment. The individual must become detached from the conditions, conventions and institutions which held him. Rousseau was the arch champion of detachment. But after we have separated the individual from convention and tradition, when we study him alone as an individual, what do we find him to be? We find that his interests are bound up with those of his fellows—we find in him a universal element which binds him to others and makes him a social person. Only in the assumption of a social person can we explain the conception of a general will. But the notion of a social person was not developed by Rousseau. That was a work begun by Kant and continued in the nineteenth century. In fact, Rousseau seems to be far away from this idea in his next work, *Émile*.

Émile's education is strongly individualistic. He is brought up in isolation. Social and political education is left out of account; Obligations to the state and to social institutions are ignored. The words command, obey, authority, and duty, were not to be learned. Émile's education is based on the principle of adjustment to situations in accordance with personal interest on one hand and physical necessities on the other. This does not mean that Émile is to be without virtues. He is to be a moral individual, but it is a morality founded mainly upon personal interest, or, at best, upon personal feelings. Until the age of fifteen the boy is educated not only for himself but by himself; self-love has been the controlling motive. "We must," says Rousseau, "love ourselves more than anything else."<sup>1</sup> A time comes when the youth begins to feel his moral nature and now he must 'study himself through his relations with men.' He no longer remains isolated, because he feels the 'need of a companion.' He inquires after his relations to mankind. There arises in him certain quasi-social virtues, sympathy and charity for all of the species to whom he is bound by common feeling. "He must be touched but not hardened at the sight of human suffering." But these 'gentle and affectionate passions spring from the love of self.' At no place do we find a willingness to subordinate himself to the interests of society as such, or to the state, or to a cause external to himself. Nor do we find any acknowledgment of duties to institutions, or recognition of the individual's place in the great social struggles

<sup>1</sup> *Émile*, Bk. IV.

that mark the advance of the generations. On this point Mr. Morley writes, "But if a man only nurses the conception of his own personality for the sake of keeping his own peace and self-contained comfort at a glow of easy warmth, surely the best thing that could befall him is that he should perish, lest his example should infest others with the same base contagion. . . . Thus even Rousseau's finest monument of moral enthusiasm is fatally tarnished by the cold, damp breath of isolation, and the very book which contained so many elements of new life for a state was at bottom the apotheosis of despair."<sup>1</sup>

Before examining in detail the notions of equality stated or implied in the foregoing works it is worth while to consider one more illustration of Rousseau's doctrine. A romantic novel has the advantage over a philosophical discourse that a glowing imaginative presentation has over formal argument. In *The New Heloise* the heroine, the daughter of a nobleman, is in love with a poor tutor, St. Preux by name. Remembrance of his plebeian station does not lessen the ardor of his passion for the high-born Julie; nor is she wanting in affection for him. They interest and love each other. The happiness of one appears to be involved in that of the other. But Julie has been promised to a nobleman, one of her own rank. Between him and her there is no congeniality, no common interest. She does not love him. Pride of birth, however, prevails. Rank is placed above affection however intense the passion, and Julie is wedded to Wolmar. Here again is the antagonism between nature and convention. The sequel does not concern us. The story is a dramatic expression of a very common condition wherein the artificial inequality of caste is made to stifle out the healthy promptings of nature.

The conception of equality in the foregoing works of Rousseau may be discussed under three headings :

- (1) Equality in an ideal primitive world before the beginning of civilization. For this conception we refer chiefly to the Discourses.
- (2) Equality on the basis of feeling which is at least an implied ideal in the *Émile* and the *New Heloise*, and
- (3) Equality in the social state, the supposition of the Social Contract.

<sup>1</sup>Rousseau, Vol. II., Ch. IX.

The first topic introduces us to a discussion of the meaning of a primitive state, the meaning of civilization and of natural law.

The idealized conception of the "noble savage" was not peculiar to Rousseau. It infested the romanticism of his day. That this ideal lingered in the French mind is evidenced, for example, in the popularity which the works of James Fenimore Cooper attained in France. The "noble savage," however, was loved at a distance. Simplicity and happiness were assumed to characterize the primitive state. Rousseau seized upon the conception as a delightful contrast to the wretchedness of his own day and country. The ignorance, barbarity, and superstition which pervades what we know of primitive races was not known or not recognized by Rousseau.

The terms nature, law of nature and natural right are difficult to define because what is "natural" to one is not natural to another. "According to nature" usually means according to the views of the particular theorist who uses this phrase. It is remarked by Ritchie that the advice of the senior law partner, "No case; abuse plaintiff's attorney," has its parallel for the theorist in "no case; talk about the law of nature."<sup>1</sup> It was the tendency of eighteenth century thought to detach itself from authority and tradition. In place of these sanctions appeal was made to nature. Ancient and hereditary rights gave place to natural rights. That nature was the center of the social philosophy of this period is evident by the Declarations of Rights in the American colonies, an idea that was later embodied in the Declaration of Independence. Virginia declared that "all men are by nature equally free and independent." Jefferson wished to include a "declaration of Rights," based, of course, on a conception of nature, in the Constitution of the United States.

The term nature has many connotations. It is sometimes used to include the totality of existence, but it is not so used by Rousseau. He emphasizes the dualism of civilization and nature. The "natural" is sometimes the "original" as opposed to the acquired or to social accumulation. The "natural" is used in opposition to the artificial or to what man produces. All social distinctions are artificial and must be eliminated before human living can become natural. Nature also connotes the simple and the normal, the condition that ought to be.

<sup>1</sup>Ritchie, *Natural Rights*, Ch. II.

Rousseau's indictment of civilization, his assumption of its worthlessness, follows logically from his premises which place at one end of the process a happy primitive race and at the other a corrupt and miserable society. Civilization had not advanced by the way of progress but by that of corruption. It was responsible for the transition from freedom to slavery. But what are the elements of civilization? A tentative statement of some of its elements may be made as follows :


1. Science and Philosophy: These terms connote respectively knowledge and wisdom. Nature has been subjugated through knowledge. Knowledge has created instruments for its control. The growth of the human race, in fact, its continuance in any form has depended upon the knowledge and skill which man could summon to compel material environment to contribute to his needs. Through wisdom man has learned to view the divergent elements of his experience more correctly in their relations and also to attain a more correct estimation of values, and thus to overcome the superstition and supernaturalism of an earlier day.

2. Social and Political Institutions: Man is by his nature a social creature and must live in a social community. Institutions are necessary for the security of life and liberty, for the prevention of disorders which friction between individuals would necessarily cause, and for the distribution and transmission of the means to right living, which the accumulated experience of the ages has justified.

3. Art, Literature, and Language: The highest aspirations and ideals of the race have been crystalized into these forms, and through them the heights attained by a few rarely gifted individuals have become visible to the many.

4. Religion: Perhaps nowhere more than here is the clarifying and progressive tendency of civilization in evidence. The crude symbolism and superstition of the primitive man's religion affords a dark background to the fraternalism that begins to illumine our social horizon.

The above constitute perhaps the more important strands of our civilization, the accumulation of the best experiences of the race. From this view-point civilization is a spiritualizing process. Our difference with Rousseau hinges on the conception of liberty. Civilization is not a regressus from freedom to slavery, but rather





a progressus from primitive animal bondage to the emancipation of the human spirit.

That there is a darker side to existent civilization no one will deny. An orderly interweaving of the above strands has not yet been attained. The proper interrelations and adjustments between the parts necessary for a perfect organization has not been learned. The reciprocal dependence of these strands has not been sufficiently recognized. Science has little more than begun its investigations. Philosophy has been the possession of the very few, and the same is true of Art. In literature we are deluged with an output that is perhaps as shallow as it is extensive. Our institutions progress chiefly by the hit and miss method and very often they miss. Religion has not attained remarkable success in inoculating its ethical content into the lives of men. And what is very important, we have never succeeded in any adequate formulation of a national ideal. But in spite of the shortcomings of present civilization our hope lies not in the past but in an onward movement. The above elements of civilization are the most precious possessions of the human race, because to them is due what freedom humanity has already attained and to them we must look as a means to a fuller realization.

What is a natural right? Professor Ritchie takes as a definition of a legal right, "a capacity residing in one man of controlling with the assent and assistance of the State the actions of others."<sup>1</sup> The right need not have been created by the state but it is such that the law courts will recognize when appeal is made to them. When disputes arise as to what is the legal right the decision is referred to the state as the ultimate authority. A moral right is defined as "the claim of an individual upon others recognized by society, irrespective of its recognition by the State."<sup>2</sup> In this case the sanction is the approbation or disapprobation of private persons in greater or lesser number. The moral right (so defined) is necessarily without the definiteness and precision of the legal right, because different sections of the same society may hold different views as to the moral worth of an act. Where shall we find a standard for the determination of moral judgments? Hobbes turned to the legal power for author-

<sup>1</sup>*Natural Rights*, Ch. V.


<sup>2</sup>*Ibid.*

ity in moral matters. The Roman Catholic Church claims Papal infallibility in matters of morals as well as of dogma. Both of these solutions have at least the virtue of being consistent and clear.

For an ultimate reference in matters both legal and moral different standards have been advanced. At one time the Church claimed authority in both. The so-called 'greatest happiness principle' of the Utilitarian school we shall have occasion to discuss later. A third solution is that of appeal to the law of nature. Natural rights are supposedly based in the very nature of things. They are the most fundamental; from them other rights are derivative. But when we come to examine the claims of the defenders of natural rights we find an utter lack of unanimity as to what the natural rights are, and of universality in their application. What appears more fundamental than the right to life? The Greeks found infanticide socially expedient. To-day we do not hesitate to deprive men of their liberty, and of their lives, too, if they violate certain requirements of the state. Nor can we find any "natural right" to property, to the power of assembly, or to the suffrage. In practice all are kept subordinate to expediency in relation to the state's *aim*. The rights we have to life, liberty, property, and the suffrage, are provided us not by nature but by the state.

The only meaning we can ascribe to a natural right is, that it is a natural power. A natural right (apart from a moral right) without the power to maintain that right is unthinkable. The individual possesses many natural powers, but the field in which he shall use his powers is curtailed by social approval or disapproval and by legal statute. Therefore, not only do we fail to find in nature a standard for legal and moral rights, but natural rights, in the only meaning we can ascribe to them, are seen to be subordinated to the legal and moral.

Natural Law has been supposed to apply to the field of Economics. Is it true that the so-called economic laws are "natural"? We are accustomed to regard the laws of physics and chemistry as fixed by or rather in nature, prior to and quite regardless of human volition, and therefore to be natural laws. It is evident that the economic laws, the "law of wages," or the "natural law of rent," are not quite of the same character. The economist of course has the right to make generalizations from his



tions of society and to make predictions as to what will happen under certain conditions. Such a study of society is most useful. But he cannot correctly give to his generalizations the character of the inevitable and immutable, he cannot call them laws in the sense that gravity is a law. At the best they represent but a fleeting condition, or but a particular stage in the advance of civilization. A rearrangement of social conditions in conformity with more correct notions of equity will doubtless render these so-called laws obsolete. Other "laws" will take their place, which means merely that other generalizations and predictions will be made, based upon the new conditions. The very obvious objection which the moralist urges against conceiving of the economic laws as "natural" is, that such conception stands in the way of social betterment. It appears to give to the present conditions an eternal character, while a higher social ideal may demand the complete transformation of those conditions. It leaves an easy loophole for the denial of moral responsibility. If it is seen that society does not rest necessarily upon certain assumed inevitable laws, human volition is more likely to assert itself as a factor in introducing new conditions to conform to a more advanced moral ideal.

The enlightenment of the eighteenth century was for the most part rationalistic. Voltaire was a rationalist and therefore he, better than Rousseau, typifies eighteenth century thinking. Rationalistic interpretation cannot appeal to the many. The intellect is aristocratic, it tends to a division into classes. Rousseau was a man from the people and spoke for the people. Human behavior is overwhelmingly controlled by feeling. The voice of the people is oftenest expressed in feeling terms. In the feelings, Rousseau maintained, we find a common or universal element, we find a basis on which all men are equal, a level at which all may understand each other. At this deep level social distinctions cannot exist. "Men are by nature neither kings nor grandees, nor courtiers, nor millionaires; all are born naked and poor; all are subject to the miseries of life, to chagrins, evils, needs, and sorrows of every sort, and finally all are condemned to death. This is what man truly is. . . . Begin then by studying that which is most inseparable from human nature, that which most truly constitutes humanity."<sup>1</sup>

<sup>1</sup> "Les hommes ne sont naturellement ni rois, ni grands, ni courtisans, ni riches; tous sont nés nus et pauvres, tous sujets aux misères de la vie, aux chagrins, aux maux, aux besoins, aux douleurs de tout espèce, enfant tous sont condamnés à la mort. Voilà ce qui est vraiment des l'homme. . . . Commencez donc par étudier de la nature humaine ce qui en est le plus inséparable, ce qui constitue le mieux l'humanité."—*Emile*, Bk. IV.

The emphasis placed upon nature has a corollary in the dignifying of the passions. "Our passions are the principal instruments of our conservation," and God did not intend they should be destroyed. "What God wishes a man to do He does not cause it to be told him by another man, . . . He writes it in the depths of his heart." In *The New Heloise* we have but the expression of healthy passion. Our sympathy is freely given to the lovers who are doomed to separation through difference in social rank. Passion creates equality, but caste does not recognize it.

The reduction of the whole of humanity to a common level on the basis of the ordinary feelings we must accept of course as a matter of fact. It is a fact of very great importance though its most ready appeal is to the sentimentalist. It does, however, serve to a large extent as a spring to moral action. It increases our pity for human suffering, and not alone human suffering. We must include the brute creation as Rousseau would admit. "How shall we allow ourselves to be moved to pity if not by transporting us out of ourselves and identifying ourselves with the suffering animal."<sup>1</sup> That the value of this principle is lessened by the logical extension of its application is an indictment which may, as we shall see later, be brought also against the 'greatest happiness' principle of the Utilitarians. Remembrance that the whole sentient creation are one in that they are subject to suffering is influential in opening our hospitals to a Chinaman or a South Sea Islander and to the formation of humane societies; but it cannot persuade us that all men should have the suffrage or even that a caste system is a national crime. If we say men are equal by virtue of the common possession of heads, we have a statement of fact, but it has little value. Though misery, and the desire for happiness, too, makes the whole world kin, knowledge of this fact does not extend us much light in the formation of political theories, unless we agree with the Utilitarians that this and not some other is the fact of ultimate importance. It is true, however, that the recognition of every individual as a center of sentience, of happiness and of misery, does present us a fundamental equality, and has been the root of innumerable philanthropic movements; and while this fact of common sentience

<sup>1</sup>"Comment nous laissons-nous émouvoir à la pitié, si ce n'est en nous transportant hors de nous et nous identifiant avec l'animal souffrant?"—*Emile*, Bk. IV.

does give but little direct light to political philosophy, its ethical recognition is still indispensable to both political theory and practice.

We have now to examine the idea of social equality based upon common participation in the social state, and therefore into the meaning of the general will. It is remarked by Wallace<sup>1</sup> that political unity for Hobbes is found in a will actual but not general, while with Locke it is general without being actual. An attempt is made to unite these two elements in Rousseau's conception of the general will. He agrees with Hobbes in conceiving of authority as will, while with Locke he places the ultimate seat of authority in the people and thereby forms the conception of a sovereign people. The voice of the sovereign people is heard in the expression of the general will. The general will implies a community of interest and aims at a common good. The individual cannot will first according to his private interest alone, and then if he choose for the common good in so far as this does not conflict with his own. If he will regardless of the common good we have the condition of society, described by Hobbes, before the social compact. That there is a common good is implied necessarily in the notion of self-government. It is because individuals have interests in common that they maintain institutions for the common welfare. Examination into the structure of society will show that the interests of individuals qua individuals do not in the main conflict with the common good. And that, as a rule, the individual while appearing to will his own interest, wills at the same time the general good, and therefore his will is one with the general will. We say as a rule because often a man is mistaken as to what really is his own interest and that of society, and at times, too, a man's motives may be malevolently anti-social. It would be absurd to maintain that in practice to-day there is no conflict between private interest and public good. Very few regard the monopolist as a friend to society, and the corrupter of legislatures, as well as the legislators who yield to corruption, are undoubtedly its enemy. These are forces that are malevolently anti-social.

Generally speaking, however, one's permanent interest is found in the interest of the whole and yet to be his own private interest.

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<sup>1</sup> *Lectures and Essays on Natural Theology and Ethics.*

It is to be expected that a man's private interest will be foremost in his mind at the time of his action; his view point is necessarily partial; he can not see the full significance of his act to the whole society. It is easier and more correct to think of society as made up of groups than of individuals; and the identity of interest between the individual and his group will be more readily conceded. Each group represents certain capacities which are necessary to the well being of other groups. The interdependence of these groups makes evident the existence of a common good. A working harmony must be maintained between them if society is to be preserved. Society must be conceived as an organization in which the interests of individuals (or of groups, since we have decided to take the group as our social unit) are unified, though apparently not completely unified, because the organization is not perfected. Properly speaking, society is in a process of organization. It is made up of a number of lesser organizations, each in itself more or less closed and complete, and each possessing certain needs and capacities. A completer organization or harmonization between these various components is necessary to a perfect society.

Where a number of individuals are concerned diversity is necessary to unity. Each individual reflects the whole society from his own unique view point. Each group and each individual has a function which is distinctive; diversity in function is necessary to obtain unity of organization. As in the imperfect analogy of a vast machine wherein one cogwheel plays into another and the various parts are operated in mutual dependence, so in society individuals and groups play into and co-operate with one another for a common end and a common good.<sup>1</sup> In such a scheme of organization, where do we locate equality? In a locomotive we cannot say a whistle is equal to a safety valve, nor is a man's right arm equal to his heart. All we can say is that each in its proper functioning is indispensable to the complete machine or complete organism, though some parts have undoubtedly a more vital function than others in the operation or life of the whole.

<sup>1</sup>The notion of an organic society as the implication of the *Contrat Social* does not conflict with the origin by contract. Notwithstanding the title of the book the contract theory is quite subordinated; moreover, the contract would never have been made had a common good not first been recognized.

Applied to the human world what we have given is the whole society. The whole society is the given fact, and to it each part is indispensable. Were it not indispensable and were dispensed with, we should have not this given whole but some other. The functions of the various parts are diverse and cannot be reduced to a basis of equality. Equality is found only in the indispensableness of each to the given whole. Of course the contribution of each should not be viewed merely as objective, i. e., from the standpoint of the state as is done in Plato's Republic. On the side of the individual there is implied the equal right of each organic constituent to realize in his own consciousness the meaning of the common good and to develop his capacities in accordance with it. This conception of self-realization which we shall have occasion to discuss later is not present in Rousseau's writings because he was not conscious of the organic character of society.

Reviewing the successive steps of the argument we find: A general will implies the notion of a sovereign people and a sovereign people means a self-governing people. Self government necessarily includes the recognition of a common good. Examination into this common good leads us to the conception of society as an organized unity. Society is made up necessarily of diverse parts each with its specific function contributing to the life of the organism. The various functions cannot be brought to a level of equality except in the sense that each is indispensable to the existent whole, and has the equal right to realize himself in accordance with the common good.

### III. BENTHAM

Throughout the writings of Bentham there is a consistency that is absent in the works of Rousseau. He scouted the notion of natural rights as so many abstractions. And because metaphysics, as he thought, deals with abstractions it held but little place in his regard. A doctrine of equality occupies an important place in his *Civil Code*, but the value of equality is derivative, not ultimate. It tends to increase the sum of happiness in the world; therefore it is good. That all men are "born and remain free and equal in respect of rights" is nonsense, says Bentham. On the contrary, men are born into a state of helplessness, and, according to the complaints we hear, grow up into one of slavery. Let us talk not about what is, but rather about what ought to be. We cannot say that men are free, but rather that they ought to be. And why? For the same reason as before. Freedom adds to the sum of happiness; therefore it is a good.

Let us get away from the speculation of bare logic to an observation of the facts of human life. What do we find? Bentham found, in the opening words of the Introduction to the *Principles of Morals and Legislation* that, "nature has placed man under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think." With this view in mind he formulates his principle of utility, "that principle which approves or disapproves of every action whatsoever according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question." Or, as it was later termed by the author, the greatest happiness principle. This principle becomes the apex of his system. It is the guide in all matters of morality and legislation. The civil and penal codes are made to conform to it. The worth of religion is tested by



Morality, politics and religion can have only one common object, the attainment of happiness.<sup>1</sup>

In the *Deontology* we are told that interest and duty are identical. To obtain the greatest amount of happiness to himself is the object of every rational being. But a man can be happy only by obtaining the friendly affections of those on whom his happiness depends. Therefore certain social virtues are to be cultivated; but the motive is egoistic and nowhere does Bentham succeed in mediating between an individualistic and a social motive. Bentham was infested by the individualism of his age. He thinks of man as an individual standing apart from other individuals. The conception of an organic society and of moral sentiments which bind together individuals into an organic unity was unknown to Bentham. With him the business of the moralist was to educate, but to educate the individual man in seeing the consequence of his acts, with the end that he should obtain the maximum of his own happiness.<sup>2</sup>

In matters of legislation he teaches the doctrine of *laissez-nous-faire*. Still the powers of government should not be too much restricted, because there are occasions when utility makes government interference desirable. Bentham adopted the *laissez-faire* principle not as did Herbert Spencer, because of certain supposed natural rights of the individual with which government might interfere; but because he believed it was the best means to secure the greatest happiness. But it is sometimes necessary that government should curtail liberty. It is the function of legislation to distribute among the community, rights and obligations, therefore curtailments of liberty are inevitable. "It is impossible to create rights, to impose obligations, to protect the person, life, reputation, property, subsistence, liberty itself, but at the expense of liberty."<sup>3</sup> The sole object of government ought to be the greatest happiness of the greatest possible number of individuals, or as it is again stated, "the legislator should have for his object the happiness of the body politic."<sup>4</sup> To secure this object we find given as means four subordinate objects, Subsistence, Security, Abundance, and Equality.

<sup>1</sup> *Deontology*, Vol. I.

<sup>2</sup> *Deontology*, p. 29.

<sup>3</sup> *Civil Code*, Ch. I.

<sup>4</sup> *Ibid*, Ch. II.

Security is the principal object because it implies extension in point of time. But subsistence is equally important, and upon these two life itself depends. The other two are rather the ornaments of life. They should be had provided it is feasible. Liberty is not included separately in this group, but it is a branch of security. However, it must give way to the general security when necessary. Equality must not be favored when it injures security. A doctrine of absolute equality is absurd. It would render all legislation impossible. Distinctions that are the necessary outcome of differences in age, intelligence, position in the family, would disappear. It is true that capable men have advocated the doctrine of the equality of rights, but they intended merely certain restrictions and modifications. The blind multitude have misunderstood them. Then, in what sense is equality desirable? The steps in the argument are simple enough.<sup>1</sup> Happiness is made to depend upon material wealth. Each portion of wealth is connected with a corresponding portion of happiness, and the greater one's wealth the greater are one's chances of happiness. It is to be noted, however, that happiness does not continue to increase in proportion to wealth, because from the constitution of human nature sensibility to felicity is limited. This principle has its psychological correlate in the law that the intensity of a sensation does not increase in direct ratio with an increase in stimulus. Therefore a given portion of wealth will create more happiness in one quarter than another. One man's wealth amounts to one thousand dollars, and that of another to ten thousand. The addition of a thousand dollars to the first man doubles his chances of happiness; to the second, happiness is increased only one-tenth. Or, take an instance of two competitors of equal fortunes. One loses half of his wealth to the other and thereby decreases his happiness by one-half. The increase of happiness to the other is only one-third, so there is a diminution of happiness. The conclusion of the argument is that the more nearly the distribution of wealth approaches to equality the greater will be the sum total of happiness. Bentham does not overlook the fact that individuals according to temperament differ in their sensibility to happiness. The rules laid down will doubtless be inexact when applied to any particular case. But as general rules they are held to be true. Generally speaking, in the

<sup>1</sup> *Civil Code*, Ch. IV.



laborer the sensibility to happiness is a maximum while the degree of sensibility in the monarch is likely to be a minimum.<sup>1</sup>

Equality in the distribution of the matter of wealth is seen to add to the sum of happiness, still it is but a subordinate object of legislation.<sup>2</sup> It is not possible, says Bentham, to obtain the greatest good but by the sacrifice of some subordinate good.<sup>3</sup> Therefore equality is to be sacrificed when it stands in the way of security. But the conflict between security and equality is not eternally fixed. In the course of time they may be brought to coincide. In a nation which is prosperous in agriculture, manufactures, and commerce, there is a continual progress towards equality. A necessary condition is that the government maintain a policy of *laissez-faire*. Security and freedom are all that industry requires. In good time a high degree of equality will come as a result.<sup>3</sup>

That progress in agriculture, manufactures, and commerce, have contributed to equality Bentham saw in the breaking up of feudal Europe. That prosperity combined with a *laissez-faire* policy of government need not make for equality, Bentham would perhaps have seen if he lived at the present day in the United States, where the most enormous aggregation of wealth the world has seen are being centered in the hands of private individuals.<sup>4</sup> Bentham succumbed to a fallacy so common in his time, especially in France and America, and later maintained by Herbert Spencer, namely, the compatibility of liberty (in the commonly accepted *laissez-faire* sense) with social equality.

Liberty and Equality are antithetical. A correct compromise between them would give us a correct conception of justice. In Hobbes' state of nature we have the doctrine of liberty carried to the extreme. The result was a *bellum omnium contra omnes*. In the adoption of the social compact, involving the unconditional

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<sup>1</sup> *Constitutional Code*.

<sup>2</sup> *Principles of the Civil Code*.

<sup>3</sup> *Civil Code*.

<sup>4</sup> It might be justly argued of course by a Benthamite that the condition depicted in the United States is partly due to a protective tariff, which would be an instance of the class legislation which Bentham so strongly opposed. The tariff is intended in theory at least for the good of the majority of the people, and they could doubtless stand more regulation on the part of the government of the affairs which affect their industrial life than at present is assumed.

surrender of the liberties of all to the sovereign, we have at once the extreme of equality, excluding of course the sovereign in whom the rights of all had been vested. To mediate between these two extremes, to give a fair proportion of both liberty and equality has been the aim of just legislators. But one can be had only with the sacrifice of the other. No two persons in the world are quite equal. A large aggregation will present the greatest diversity in powers and capacities. If liberty is given sway the direst inequalities will result. If equality is to be secured liberty must be curtailed. Justice is based on the idea of equality. The just legislator will aim to secure a condition of equality or equity which will prevent the more capable from exploiting the weakness of the less capable, but he will take care not to destroy spontaneity and initiative when such independent action is given a legitimate outlet.

An attempt to formulate a compromise between liberty and equality is given in the words of Herbert Spencer. "Every man is free to do what he likes, provided that he infringes not the equal freedom of any other man."<sup>1</sup> It takes but a superficial analysis of the facts of human society to show the futility of this formula. It would give equal freedom to all. Every man may do as he likes but must allow the same privilege to all others. If each person were a Robinson Crusoe on his own island each could therefore have unlimited sway within his own domain, and the formula would apply so long as each was contented to remain in his isolation. But instead of living in such separation men's lives are lived in a most complex and intricate social state. All of one's actions bear more or less upon the lives of others. No one's sphere can be definitely mapped out indicating just what is to be his conduct and what not. Men differ very radically in ideals, in natural capacities, and in notions of happiness. Perpetual conflict is inevitable. What is to become of the "equal freedom" that the formula promises? It can never be attained on the basis of a philosophy of individualism such as that of Spencer and his school. Spencer follows Bentham in failing to recognize that individualism which connotes the *laissez-faire* doctrine of liberty, makes toward inequality as its goal.

It is remarked by Burton, one of the editors of Bentham's works,<sup>2</sup> that there are many who accede to his practical measures

<sup>1</sup>Justice, Ch. VI.

<sup>2</sup>Introduction to Bentham's works, in Vol. I.

while they reject his general principles. Such an attitude is partly in keeping with the view point of the present essay. It is not necessary here to attempt a detailed refutation of hedonism, since we are not concerned with it as our main problem. Still, were the greatest happiness principle universally accepted as the goal of morals, religion, and politics, our conception of social equality would probably be modified by that fact. Some reasons for rejecting this principle here are the following.

In the first place, it confuses psychology with ethics. The hedonic principle aims at increasing the feeling of pleasure and avoiding the feeling of pain. This feeling is necessarily individual, therefore egoistic. An act performed in the service of others, if it gives pleasure to oneself remains an act of egoism if done for the sake of that pleasure. If we are to have an Ethics at all, it must be concerned with ends beyond one's self. J. S. Mill, in advocating universal hedonism, cites the instance of Brutus condemning his sons to death.<sup>1</sup> Mill says, it is impossible to suppose this gave him happiness, but that in the end it was calculated to bring happiness to others. This would be an illustration of complete altruism, a doctrine equally as false as egoism. Men do not make great personal sacrifices for the sake of creating a passing feeling in others. We cannot explain the lives of the world's greatest heroes, sages, and martyrs on the principle of either egoistic or universalistic hedonism.

The most common fallacy of hedonism is probably the following: because men contemplate with satisfaction the attainment of their desires it is assumed that the satisfaction itself is what they desire. We desire things as means to an end or as ends, and what makes towards such ends is of course viewed with pleasure or satisfaction. If it were not so, if we were of such a nature as constantly to contemplate with dissatisfaction the things which at the same time we desired, what an irrational world would be ours! Such a situation is however scarcely conceivable. The fallacy consists in supposing that the satisfaction or pleasure which accompanies the end is the end itself. Satisfaction is included in the very notion of volition, but it is by no means an element prominent in consciousness at the time of an act of willing. One does not say, "I want to do this because it will bring me happiness or satisfaction." That our desires are for specific objects

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<sup>1</sup>*Essay on Bentham.*

rather than the pleasure which accompanies such objects was very clearly pointed out by Bishop Butler.

Viewing the subject from the psychological side the following fact may be added: while sometimes pleasure and pain, or the thought of them, do serve as motives to our actions, they are by no means the only motives. Percepts, concepts, creations of the imagination—all have the “impulsive quality,” or, in other words, may serve as stimulants to action.<sup>1</sup>

Furthermore, Bentham’s wide extension of the term pleasures, the very diverse situations to which he applies it, detracts much from the significance of the term. Under Springs of Actions (outlined in Vol. I of Bentham’s Works) are given the several species of pleasures and pain. When we find given as sources of pleasure, vengeance along with righteousness, cupidity with honesty, and malice with friendship, the common element, pleasure, becomes utterly colorless and meaningless. The prominent fact in the first grouping, for example, is certainly not pleasure but vengeance and righteousness.

We have already observed that Bentham pretended to despise metaphysics. It is questionable, however, whether an adequate ethics can be formulated without a basis in some view of reality. Of course the highest moral conduct is possible in an individual without his forming any definite conception of what this reality is, leaving the question to remain vaguely in the background. But that human conduct may have some ontological bearing, that human lives may be planned in conformity to some cosmological purpose, it has been common for men to believe. The Utilitarian ethics does not allow for sufficient speculation along this line. Not that we would include, with Spinoza, the whole universe in our ethics. We may even agree with the Utilitarians that ethics and cosmology should not blend; that the highest good for ethics may have nothing to do with a creator of the physical world or with the forces in physical nature, and still see in the facts of experience indications of a spiritual process within the cosmos which gives to men’s actions a meaning wider than if centered merely in themselves.

We have pointed out how it is possible to disagree with Bentham in his general principles and still approve of his detailed applications. We have differed from his fundamental happiness principle. His theory of equality is open to obvious objections.

<sup>1</sup>See James, *Principles of Psychology*, Ch. XXVI.

if it is to be taken seriously at all. It seems impossible to correlate a portion of material wealth with a definite measure of happiness. If this were possible it would still be necessary to obtain a certain minimum quantity of both wealth and happiness to serve as starting points for calculations. The cause of happiness in the case of any individual is made up of a number of elements. The possession of wealth is but one element and it operates in varying degrees in different instances. Bentham confuses wealth with other causes of happiness. For example, he argues that the continued increase in the matter of wealth to the multi-millionaire represents so much added happiness, because were it not so he would no longer strive after wealth.<sup>1</sup> The fact is, however, that the source of pleasure in this case is not in the added increment of wealth, but in the activity of successful pursuit. Perhaps just as keen, if not keener pleasures have been felt by artists and authors at the successful completion of some work which brought them little or nothing in the matter of economic wealth.

But it would be only a narrow ascetic or an oligarch who did not acknowledge that an increase of wealth and prosperity among the masses tends to human betterment. This is what makes Bentham's doctrine of the equality of wealth assume very great importance. A more equal distribution of the products of industry is desirable. Mr. W. M. Salter in discussing the Rights of Labor in his book called *Ethical Religion*, gives the following example to illustrate the inequalities of distribution: "Mr. Edward Atkinson has recently made an interesting analysis of the cost of running an average New England cotton-mill.<sup>2</sup> . . . . The number of working people in the mill he puts at 950, working on the average for \$300 a year each, making a total in wages of \$285,000. The profit of the three mill owners over and above all expenses, insurance, taxes, and a liberal allowance for depreciation of the mill he estimates at \$60,000 or \$20,000 each. . . . one owner has sixty-six times as much as one of his employees." It is worth noting that Mr. Atkinson was a cotton mill owner himself and was speaking in defense of the rights of capital. Mr. Salter recognizes that both capital and management have their claims to shares of the profits, but believes an unjust distribution exists through the encroachment of those claims upon the share of the third factor, that of labor.

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<sup>1</sup> *Principles of the Civil Code*, Ch. VI.

<sup>2</sup> Atkinson, *The Margin of Profits*.

That the sum of happiness would increase with an approach to equality in the possession of wealth, Bentham believed. There are, he says, certain fundamental enjoyments of which human nature is susceptible, common to both laborer and monarch.<sup>1</sup> There are pleasures which have to do with the preservation of life, with repose and with sympathy. For the enjoyment of these pleasures a certain minimum of the matter of wealth is necessary. When they cannot be enjoyed pain is felt. Their enjoyment is necessary to preserve a balance of happiness. They are pleasures that belong to subsistence and subsistence as an object of legislation must take precedence over abundance. It is better that all should share the means of subsistence than that a few should possess abundance.

If the principle of subsistence for all before abundance for the few were made operative in modern industrial life, more consideration would doubtless be given to the claims of labor. Every man, be he laborer or not, has a human life to live. To this end a certain minimum requirement of wealth is necessary. The workingman renders services to society and in return he should have enough, to quote the words of Mr. Salter,<sup>2</sup> "to enable him (1) to run a fair chance of living out the average term of human life; (2) to have a family of moderate size; (3) to let his children go to school until they are at least fifteen years of age; (4) to let his wife attend to the duties of a mother and a housekeeper; (5) with reasonable economy to lay aside something for his support in old age." The writer says further it is impossible to speak of just and unjust wages in terms of money, owing to the constant changes in its purchasing power. But there should be minimum wages, whatever their money equivalent may be, which would permit industrious workingmen the privileges above enumerated, and below this point competition should not be allowed to determine the wages of the laborer.

It would be a mistake to think that Bentham advocated the subsistence of all before abundance to the few as a principle of legislation. That he believed in such principle as contributing to greater happiness, we may easily infer if we credit him with consistency. The terms 'subsistence of all before abundance to the few' are not Bentham's. He uses the general terms subsistence and abundance, and his doctrine that subsistence should be prior

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<sup>1</sup>*Constitutional Code*, Ch. III.

<sup>2</sup>*Claims of Labor in Ethical Religion*.



to abundance in the legislator's consideration is a general statement. Abundance wherever it can be attained is to be encouraged, that is, it must not be discouraged. But in respect of both subsistence and abundance the laws have almost nothing to do.<sup>1</sup> All that the law can do is to create motives. In the case of subsistence, "the force of the physical sanction being sufficient the employment of the political sanction would be superfluous." And to secure abundance, "what more is required than the force of these natural motives for carrying the increase of wealth to the highest possible degree." The wealth of society consists, says Bentham, in the total of the wealth of the individuals composing it. The individual is encouraged to increase his abundance "to the highest possible degree."<sup>2</sup> That this application of the *laissez-faire* doctrine of liberty might interfere with the bare subsistence of some other part of the population is not recognized.

The doctrine of *laissez-faire* means, in briefest terms, non-interference on the part of the government; or, since some interference into the affairs of the governed is necessary to the very notion of government, let us say, it means a minimum of government interference. That this was the ideal of the author of the Declaration of Independence and has continued the ideal of a large class of political thinkers, including Herbert Spencer, is well known. According to this philosophy the liberty of the individual stands in opposition to the power of the state.<sup>3</sup> Any added increment of power to the state is accompanied by a curtailment of liberty to the individual. To secure the greatest amount of individual freedom let there be a minimum of state interference. There is a fallacy here that is lucidly discussed by Dr. T. W. Taylor in his essay on justice.<sup>4</sup> The mistake consists in failing to distinguish between society and the state. Society, as well as the state, imposes its restraints. In fact, they are more num-

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<sup>1</sup> *Civil Code*, Ch. IV.

<sup>2</sup> *Civil Code*, Ch. V.

<sup>3</sup> This last remark will hardly apply to Bentham because as was noted before his individualism differed from that of Jefferson and Spencer in not being founded on abstract individual rights, but was adopted as the best means to the greatest happiness. His ideal is not the liberty but rather the happiness of the individual, and individual endeavor may be restrained by the government when such endeavor is seen to operate in a manner contrary to the greatest happiness principle.

<sup>4</sup> *The Individual and the State*.

erous and more dreaded than those of the modern state can be. There are restraints dictated by fashions; by current conceptions of honor and morality; by church societies; by the boycott; by labor unions and by combinations of wealth; by clubs and by one's social caste. "The distinction between the state and society lies, not in the presence or absence of coercion, but in the presence or absence of law."<sup>1</sup> In addition to the restraints and constraints above enumerated there is the fact of aggression. Unlimited aggression of one element of society upon the remainder will inevitably result, unless there is interference by the savory laws of the state. It should be the object of the legislator to practice just interference, to protect members of the state from the unjust restraints and constraints imposed by certain elements within society. "The end of law," says Locke, "is not to abolish or restrain, but to preserve and enlarge freedom."<sup>2</sup> State activity is therefore for the promotion, not the curtailment of freedom. True, its method is necessarily one of restraint. The problem of justice is here. The state restrains injustice. It guarantees freedom under just laws. What is justice and what should be the limit of state interference are questions we need not enter upon. But it is most probable that, at present, in America much more is to be feared from private aggression, and from unreasonable impositions emanating from private sources than from state activity.

In Bentham's fundamental principle itself, aiming as it does at the increase of pleasure and the avoidance of pain, no one can overlook the potent tendency to a universal equality. It is true that pleasures differ in kind; some are called refined and others coarse. Bentham himself makes no use of this distinction. And though we may think the exquisite rendition of grand opera much superior to the satisfaction of physical appetite as a source of pleasure, and find in this fact some justification for inequality, even on the pleasure-pain basis, still the like character of body and mind common to the whole human race shows such inequalities to be non-essential. There are certain pleasures that all, princes and paupers alike, covet. Bentham mentions those that have to do with preservation, with repose and with sympathy. There are certain pains that all must suffer. In the essential parts there is a striking similarity throughout humanity. What

<sup>1</sup>*Ibid.*

<sup>2</sup>*Civil Government*, Bk. II, § 57.

more convincing argument for equality on this basis have we than the plea of Shylock: "Hath not a Jew eyes? hath not a Jew hands, organs, dimensions, senses, affections, passions? fed with the same food, hurt with the same weapons, subject to the same diseases, healed by the same means, warmed and cooled by the same winter and summer, as a Christian is? If you prick us, do we not bleed? if you tickle us, do we not laugh? If you poison us, do we not die?"

Some men are susceptible to pleasures that are denied to others. All men have pleasures that are denied to the highest of the lower animals. Nevertheless, if pleasure and pain constitute the fundamental principle of connection we cannot leave out the animal world. That at one time men alien to the tribe received no more consideration than stones, history records. That to day horses are treated as mere physical mechanisms, their susceptibility to pain affording opportunity for manipulation, is witnessed in our city streets. Our human tribe has enlarged, giving birth to humanity, but they are still without the tribe. The pleasure-pain hypothesis would bring them in. It demands for them kind treatment. Let there be a balance of pleasure over pain. Rousseau's tenderness for animals was noted in discussing the *Émile*. On this subject Bentham is still more explicit, as the following lines from the Deontology will show: "If the animals we call inferior have no title to our care, on what foundation stands the claim of our own species? The chain of virtue will be found to girdle the whole of the sensitive creation. The question is not can they reason, nor can they talk, but can they suffer?"<sup>1</sup>

That all men and animals are alike in that all are susceptible to pleasure and pain is undeniable. That all suffer is a statement of a very obvious fact. But what is the value of this fact? Pain in any form is undesirable, and unless there is a greater good derivable from it, no avoidable pain should be felt. Let there be a minimum of suffering. We have dispensaries, hospitals and humane societies, and could make use of more. The sight of common suffering should make men kind. The recognition that all of the sentient creation are environed by unrelenting law should teach men forbearance. Similarity of physical life is, however, not a fact of great importance in a discussion on social equality. All the flowers in a garden may have their roots in the

<sup>1</sup>Ch. I.

soil, but this does not make the poppy equal to the rose. All may be nourished by the same summer rains, but this is a fact of little importance in determining their relative values. Similarity of physical life throughout the kingdom of men and animals is a fact of little importance in determining their relative claims to reverence.

## IV. KANT

The contrast is extreme indeed between Bentham and Kant. Here again is the antithesis of Epicurean and Stoic. With the first we are on the earth, and in the eyes of some of his critics, of the earth, and being of the earth, earthy. With the second we walk the upper air of abstract reasoning. We find our refuge under universal laws that are coterminous with the length and breadth of the universe. Authority is placed in abstract laws. These to the Benthamite are but the cobwebs of a fanciful brain. Bentham condemns authority. "Reason, right reason, nature, nature's law, natural right, truth," etc., he says, "all are but the dogmas of men who insist on implicit obedience to their decrees."<sup>1</sup> To Bentham self-interest and duty are one. On the notion of a man's performing an act of self-sacrifice he writes: "Unless in some shape or other he derived more pleasure from the sacrifice than he expected to make in abstaining from making the sacrifice, he would not, he could not make it."<sup>2</sup> To Kant self-interest, i. e., inclination, and duty are antithetical. The empirical self must be constantly sacrificed in order to bring one's actions in accord with a universal law of right. In short, Kant's universal law which is absolutely binding, quite regardless of its utilitarian consequences, is to Bentham the merest vagary. And Bentham's fundamental principle is exactly what Kant excludes as a motive to moral action. He does say, however, that it is a duty to promote the happiness of others though not of one's self. Is this distinction, on Kant's own test of rightness, consistent? Altruism and the assumption of happiness as an end of conduct is doubtless introduced to relieve the austerity of his system, but the introduction is at the expense of consistency. It is inconsistent because happiness is a so-called natural end, i. e., it has to do only with the empirical and therefore cannot become the goal of a moral law. It is difficult, too, to see why a man whose character as an end in itself is determined by his having

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<sup>1</sup> *Deontology*, Pt. I, Ch. IV.

<sup>2</sup> *Ibid.*

a rational nature should be interested in furthering the inclinations of sensitive beings, since rationality is put in antithesis to inclinations, and inclinations are regarded as a source of slavery. Moreover, the principle cannot be universalized, since it is always to exclude the self of the doer. It would be evident from this doctrine alone that Kant shared the atomistic conception of society common in the eighteenth century. It is a duty of the individual to work for the happiness of others but never for his own. He sacrifices himself therefore to other individuals. If Kant had really attained the organic conception of society he would have seen that the sacrifice of the individual is to be made not to other individuals but to a universal. This universal has usually the form of an institution, e. g., that of the family or of the state. The individual sacrifices himself to the universal of which he himself is a part. Therefore his sacrifice cannot be absolute. It is the merging of the self into a larger life. Altruism as a doctrine must disappear along with the atomistic conception of society.

The point of departure for Kant's ethics is the dualism of desire and reason. This antithesis Kant had inherited from the past, an antithesis that had come up again and again in varying form. It may be traced back to the Middle Ages and even to Plato. In the figure of Plato it is the monster in the man as opposed to the man himself, i. e., it is appetite opposed to wisdom. In the mediæval Church it was the dualism between nature and supernatural grace, and only through the mediation of the Church could a man proceed from his natural, or fallen state, to the state of grace. The dualism of the carnal and the spiritual found in the Epistle to the Romans becomes fundamental in the theology of Luther. But now the Church is no longer necessary as a mediator. The individual in an immediate relation to his Creator receives the grace necessary to his salvation. In Hobbes we find reason opposed to the passions. In the state of nature the passions have sway, resulting in a *bellum omnium contra omnes*. But reason is made to prevail over the passions by the institution of the civil state. The submission of individual passion to legal authority (though not by contract) is an idea which Hobbes inherited from Machiavelli. In Spinoza the terms of the dualism

<sup>1</sup> *Republic*, Bk. IX.

do not stand in such sharp antithesis. Reason is the same as thoroughly intelligent desire. A man must act by desire, but to the purified intelligence desire and reason are one. To Bentham the dualism did not exist. In Kant, however, it is strongly emphasized. But in Kant it is an internal dualism, and the solution is found within self-consciousness. Evil is not overcome by a free gift of grace from on High, as theology taught, nor is authority from the Church, neither is authority vested primarily in the State, as Machiavelli and Hobbes believed. But rather man gives law unto himself. His will is autonomous. Authority is conceived as internal, not external. There is still a conflict between reason and desire, and reason must control desire, but the nature and the means of this control are found within the man himself.

It is the form rather than the content of an act that determines its claim to moral worth. The *Metaphysic of Morals* opens with these words: "Nothing can possibly be conceived in the world, or even out of it, which can be called good without qualification except a good will. . . . A good will is good not because of what it performs or effects . . . considered by itself it is to be esteemed much higher than all that can be brought about by it in favor of any inclination, nay, even the sum total of all inclinations." If Kant means that a will is to be considered good or otherwise quite regardless of the *end* to which it is directed, since the end is necessarily empirical and therefore cannot serve as a proper motive to moral actions, or, in other words, if he holds to an empty form of will quite regardless of some notion of an end willed, his conception is at least hard to grasp. Upon this Kantian doctrine the criticism of Herbert Spencer appears tenable.<sup>1</sup> Spencer reiterates his own criterion of a necessary truth, the inability of the mind to conceive of its negation. But, he says, Kant sets out with propositions the affirmative of which is inconceivable and from such affirmations proceeds to draw conclusions. "Will," says Spencer, "implies the consciousness of some end to be achieved. . . . Will becomes cognizable by morality only when it gains its character as good or bad by virtue of its contemplated end as good or bad. . . . Kant says a good will is one that is good in and for itself without reference to ends . . . an inconceivable proposition." It is possible to approve of the

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<sup>1</sup> *Fortnightly Review*, 1888.

above criticism without adopting Spencer's own test of the rightness of an act, i. e., its value in contributing to the increase of pleasure and the avoidance of pain. From the act of willing remove the empirical content, i. e., the end willed, and the will becomes an empty form, if it can be conceived at all.

The charge of pure formalism is again brought against Kant's conception of duty. Duty consists in obeying the general formula of the categorical imperative: "Act according to a maxim which can at the same time make itself a universal law." Duty consists in obeying a Law of Right and the essential characteristic of such law is universality. There must be no individual bias or inclination. Only that act has moral worth which is done on the principle of duty. To act morally is to do not merely as duty requires, but because duty so requires. A stoical austerity underlies his entire conception of duty. If I have a pleasurable inclination to perform an act which at the same time I could will to be a universal law, my act loses in moral worth merely because the performance of the act gives me pleasure. If this is true, it is impossible to find happiness in well doing, because when one begins to feel happy in the performance of a right action, that action begins to lose its moral worth. The position of Kant that acts done from inclination have no moral worth leads, according to Spencer, into absurdities.<sup>1</sup> Because in order to be sure an act has moral worth it must be seen to be done not through inclination, but rather, contrary to inclination. The most moral man is he who has not the inclination to be honest, or kind to his family, or a good citizen, but is so nevertheless at the command of duty. When a man takes pleasure in promoting the happiness of his family then his endeavors lose their distinctive moral quality. Allowing the justness of Spencer's criticism, it is worth noting that his own test of the rightness of an act, as was suggested above, is no more tenable than that of Kant. Only that act is absolutely right, to Spencer, which involves absolutely no pain.<sup>2</sup> Therefore the humane operations of the dentist and surgeon have in them an element of wrong. Writers on ethical theory are usually the most convincing when engaged in criticism of their adversaries; and they are least convincing in the presentation of their own systems.

<sup>1</sup>*Ibid.*

<sup>2</sup>*Data of Ethics*, § 102.





The categorical imperative is again stated thus : "Act as if the maxim of thy action were to become by thy will a Universal Law." It is true that the element of universality is necessary to a proper conception of justice. It insists upon the omission of bias, upon the absence of anything that stands in the way of fair play to all. Were it possible to obtain a complete knowledge of what justice is, we should probably have a summation of all ethics. Too much homage cannot be given Kant for his emphasis upon the element of universality in ethics. But when I perform an act it is in a particular concrete situation. I will a definite end, the expected realization of which is either immediate or remote. It is the end that moves me and not an abstract formal maxim without reference to an end. The maxim according to which my particular act must correspond is conceived by Kant as a priori determined. It is absolutely binding upon all rational beings, it is unchangeable, eternal in its character. But it is evident that a rule of right applicable to society at one stage of evolution might not be right at another, and that all the situations wherein I as an individual am called upon to act are particular situations and cannot be universalized.

A law of right, when it is once determined according to a maxim, is universal in its application ; i. e., it can admit of no exception. Moreover, this particular law of right is conceived as a priori determined without reference to other laws. But they may conflict with one another and as a matter of fact they do. Let us use Kant's own illustration.<sup>1</sup> A man has a talent which if it were developed would make him a useful member of society. Therefore the development of this talent is his duty. But certain means are necessary which he does not possess. Still, he must not steal, because this would violate another law of right. Another man sees his family in dire distress and feels it his duty to relieve them. This can be done only by borrowing money on a promise to repay at a certain time, a condition which he knows he cannot fulfil. But lying in any form is a violation of a universal law of right. A prosperous man finds it his duty to relieve the condition of the wretched people around him. But how far should he go in the distribution of his wealth? In these difficulties Kant's formula is no guide whatever. If we were purely rational beings and utterly devoid of all empirical belongings (a condition which

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<sup>1</sup> *Metaphysics of Morals*.

is of course inconceivable), then perhaps Kant's theorem would apply. It would apply, however, to a static world. Happily human society appears to have a dynamic character. It is possible for it to change. Huxley thought it better for the human race to be annihilated than to remain in its present condition. I can approve of a law made in support of private property when I see that certain moral and social results are thereby obtained; but I cannot conceive such a law as universally and externally applicable to all rational beings throughout the universe if I believe private property an institution merely expedient to the present stage in our social evolution, and which, possibly, will find no place in a later and higher stage. The gist of the argument is that a law cannot be merely formal. No law applicable to the individual or to society can be made without close analysis of the empirical situation and without reference to an end or ideal which it is the hope of the individual or of society to approach.

Underlying Kant's scheme for the formulation of a universal law of right appears the spurious assumption of an equality that was common in the eighteenth century, the assumption that men are alike in their capabilities. It was the supposition that the inequalities which were obvious in society were non-essential. They were but an artificial and temporary condition that had resulted from an imperfect development. Kant gives as the test of the morality of an act its own self-consistency when conceived as a universal law. When you propose to yourself a certain act, assume that every other rational being will act in the same way. If your maxim is then seen to be self-consistent, i. e., if the end proposed in your act is not defeated by its universalization then the act is moral. If a man is tempted to tell a lie, let him first consider his act as universalized. Then it will be known that the truth is never told, and no one will believe another. In this case it would be useless to lie, because he who lies does it with the expectation of being believed. So it becomes futile to lie at all when lying is considered as a universal maxim. The case is the same with stealing. If this habit were to become universal it would be useless to steal at all. Because, what could be the use of acquiring property of which you would immediately be deprived by another? Here again the end of your action is defeated when considered as a universal rule of action, i. e., the maxim is inconsistent with itself. There appears to be a fallacy here in the supposition that if all

were disposed to act according to the false maxim, they would be equally able to do so.<sup>1</sup> It is easy to imagine some few individuals endowed with unusual strength to habitually steal from the remainder of the population and to have the power of compelling this remainder not to steal, at least from them. Neither could all men have the same skill in lying, therefore where one would succeed another would be defeated in his purpose. It would thus be possible for some to obtain, by virtue of superior strength, the proposed ends of their actions when acting contrary to a Law of Right, even though the entire remainder were disposed to act in the same manner.

In so far as Kant's purpose is merely to obtain a universal maxim which is seen to be consistent with itself, e. g., telling the truth, and to avoid a maxim which when universalized is inconsistent with itself, e. g., lying, our criticism at this point does not hold. But in so far as self-interest is regarded as a criterion of a rule of right, as it appears to be in the four illustrations given in the *Metaphysics of Morals*, then the objection holds, because numerous instances could be given where self-interest is not defeated though the action is contrary to a universal law of right.

In the second fundamental formula of the *Metaphysics of Morals* we have what is perhaps of most permanent significance in the Kantian ethics. Every human being must be conceived as a personality of absolute worth, and as such can never be used as the tool of another. There is a vast difference between a person and a thing; and it is only a thing that can be regarded merely as a means. "Rational nature exists as an end in itself." Each man necessarily conceives of himself as an end, and every other rational being conceives of its existence similarly. Therefore the nature of each as an end becomes a universal principle, which is formulated in the practical law, "So act as to treat humanity, whether in thine own person or in that of any other, in every case as an end withal, never as a means only." This does not mean that the second formula is derived from the first or in any way depends upon it. The conception of man as an end in himself comes in *de novo*. That a rational nature exists as an end in itself is a self-evident proposition. Man has a universally legislative will; he is the source of definite laws; we estimate him and find him to be of absolute worth.

<sup>1</sup>See Adler, *Critique of Kant's Ethics, Mind*, 1902.

The term end as used in the second formula requires some explanation. I cannot make myself or any other personality the end of an act of will. In my conduct I may be influenced by the notion that all persons have absolute worth and are therefore to be regarded in a sense as ultimate ends, but I cannot make them as rational beings the ends of my acts. Rational beings themselves are never the ends of my acts of volition. What can be acquired by our actions is of conditional value, it is related to things; but rational beings are of absolute value. It would be less confusing to say, not that humanity in thine own person or in that of any other is to be regarded as an end, but rather as something of absolute worth in view of which ends are to be determined.

The second formula serves better than the first as a basis for practical rules. Let us take Kant's own examples.<sup>1</sup> The first is that of contemplated suicide. He who would put an end to his own life would on the first formula consider his intended act as universalized. Will the maxim as a universal be self-consistent? Kant's answer is that a system of nature could not without contradiction allow of a law to destroy life for the sake of self-love, which is the very feeling whose special nature it is to impel to the improvement of life. But the inconsistency here belongs to nature and not to the maxim of the suicide. The maxim of his act could be universalized and acted upon with perfect self-consistency. On the second formula, however, with its idea of humanity as an end in itself, the would-be suicide is confronted with the situation of subordinating a personality, something of infinite worth, to a transient inclination. This would be a violation of the formula. The superiority of the second rule is again evident in the case of theft or falsehood. It is impossible to imagine such acts as these as universalized; the resulting condition, if conceivable at all, would be an utter absurdity. As stated before, we can imagine all disposed to act on such maxims, but with the result that the strong would obtain their coveted ends and still maintain some degree of social stability by forbidding the weak to act upon the same maxims. But from the second formula again it is easier to deduce a practical rule. If I regard those around me as personalities having in some actual or potential sense absolute worth, this very idea so compels my respect that I can

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<sup>1</sup> *Metaphysics of Morals.*



not consistently subordinate them to the petty ends coveted in my act of theft or falsehood. It is a matter of the estimation of values. I have some responsibility wherever my influence extends. If I believe there are certain capacities centered in another's personality and that these are capable of development and are, too, the only things of which I can predicate real worth, then I evidently ought not, since I am a responsible being, to permit an affront to another's or my own personality for the sake of the gratification of passion. The exploitation of the personality of any human being, or conduct that would lead to the retardation in growth of the capacities contributing to his fuller life, is clearly interdicted by the second formula. This formula Kant calls the practical imperative. It has been readily accepted by more recent writers on Ethics, with the substitution of the term *personality* for rational nature. Personality is taken to connote all the capacities of a man that are socially useful.

It is possible to see the rich significance in the formula which makes humanity an end in itself without adhering very strictly to the categorical imperative, or, indeed, without depending upon that imperative at all. The categorical imperative would move us to moral action by the very idea of universal law. Its formula is but the application to conduct of the ideas of necessity and universality. It is probable that very few, if any, persons are determined solely, if at all, by such motives. Kant himself says, we can never be sure in the case of any particular act that a person is acting in deference to a law of right, rather than in self-interest. The fact is, that human acts arise from quite an unlimited number of motives. Among these may perhaps be included the desire to act purely in accordance with principle or with a supposed universal law of right. Even in this case however it is probable that some end is implied, even if not at the time uppermost in consciousness. Such an end might be, to feel oneself in the company of the best or to contribute to the realization of some social ideals. Moreover it is possible to act on a principle which leads to a bad end. It is safe to say that Kant erred by making a general two-fold division of all motives to human action. The first division includes actions done for the sake of duty and in accordance with universal laws of right; only such acts are to be credited with moral worth: and the second division, all acts resulting from inclinations or desires, all of which are summed up in the

general term happiness. That all desires are for happiness is a mistake which Kant shares with the Utilitarians. It is Benthamite doctrine accepted only to be rejected. Both agree in the premise that all desire is for happiness. Therefore, says Bentham, it ought to be and must be the end of all human conduct. The desire for happiness as an end, says Kant, can never give to your act moral worth. And as all acts from desire involve happiness as their object such acts cannot be termed moral. Man is a rational being and must act in accordance with universal laws and without any empirical bias whatever. Only that act is moral which is done on the principle of duty.

When we want practical rules of conduct, however, we find that the formula of the categorical imperative, "act on a maxim that is fit to be a universal law," affords but little light. It does not serve as a source for the derivation of practical axioms nor as a motive to action. In any situation in which we are called upon to act the maxim of our action will depend rather upon *our estimation of values*. The categorical imperative pushes one from behind he knows not whither. The formula here substituted beckons one ahead to that which he sees as the highest good. And what becomes of the "I ought" that is contained in the categorical imperative? It remains as before a matter of experience. The "I ought" is a complexus of ideas and feelings and according to Kant must be taken as an experienced fact. But the direction which the will receives from the "ought" is to that end which is seen to be of most worth.

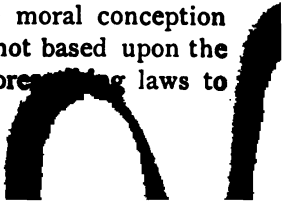
Kant became the mediator between the atomistic notion of society prevalent in the eighteenth century and the conception developed later that society is organic. He went beyond the first without having reached the second. Eighteenth century thought attempted to get along without the past; it endeavored to secure detachment from tradition, authority, and even from organization. Kant certainly dispensed with tradition. The problems of authority and organization were disposed of by making them primarily internal principles. Hume had conceived of the mind as but a flux of mental states, or a stream of sensations and ideas that came and went and among which was no identity and no law other than that of custom. There is such a flux or chaos of appearances, Kant maintained, but that is only half of experience. Analysis of experience shows this flux of states which considered

alone is an abstraction, to be brought into organization by the unity of apperception under the form of the categories. The conception of the mind as such a form, Kant maintained, gave organization and law to experience and certainly to knowledge. A comparison of the ethics of these two men is also interesting. Hume found the basis for human conduct in two fundamental tendencies that were grounded in human nature: (1) the tendency of each man to seek his own advantage, and (2) the tendency to sympathize with other men. These Humean principles were adopted by Adam Smith, becoming respectively the basis of his Political Economy and his Ethics. Tendencies to self-interest and to sympathy could not serve Kant, however, as foundations for moral law, in the conception of which he included the attributes of universality and necessity. Self-interest and sympathy are included in the mass of inclinations which must be subordinated to the Law of Reason. Reason in the man sets up an absolute authority in the moral law. The source of such law and authority is found in an autonomous will (another name for Practical Reason); i. e., a will in the man which is universally legislative, which prescribes the very laws which he and all other rational beings are bound to obey. This is the tie which connects one member with the group, which identifies the individual with the social. He need act only on his own will, but he thereby wills the universal. He is thus in accord with all rational beings, because all are conceived as willing alike.

The conception that every rational being prescribes in the maxims of its will universal laws, so as to judge itself and its actions by such standards leads, says Kant, to another conception, that of a kingdom of ends. By this he understands "the union of different rational beings in a system by common laws." This is certainly, as Kant says, a very fruitful conception. But its derivation should come from the second and not the first formula of the *Metaphysics of Morals*. Criticism has already been made of the impossible application of the first formula. Allowing for a moment its use as the avenue to a kingdom of ends, this conception might mean a system of effects or goals willed in common by rational beings according to universal laws. But the effects so willed would necessarily be empirical and therefore would not constitute for Kant a system of moral ends. Or, perhaps a system of *forms* in which the willing occurs, or of principles without regard to empirical ends; but this is inconceivable. The term 'end' evi-

dently refers to a rational being as such, and therefore the conception of a kingdom of ends is better derived from the second formula. It could be derived from the first formula only in the sense that each is an end by virtue of sovereignty, because every other, as well as himself, must obey the laws which his will decrees. Each is both sovereign and subject and as sovereign may be considered an end.

The second formula, however, "Treat humanity, whether in thine own person or in that of any other, never as a means only, but always as an end," is more fruitful as a source for the derivation of the moral conception of a kingdom of ends. Each person is an end in himself, i. e., each is a being whose worth cannot be estimated, because it is not relative but absolute. We pass in array the many elements of our experience. We may make with Kant the general division into things and persons, and submit them to an estimation of value. The worth of the former is always conditional, it is always relative to some end. The latter cannot be so regarded unless it be in reference to some cosmical purpose of which we have at present no knowledge. A personality we must accept as an end in itself, i. e., as having absolute worth. Kant arrived at this conclusion from the fact alone of man's rational nature, by which man becomes the giver of universal principles. "The will of a rational being," he says, "must always be regarded as legislative, since otherwise it could not be conceived as an end in itself." The one fact of rationality, according to Kant, gives to man his character of absolute end. But the rational is only one side of man. He is a complex being endowed with capacities which have to do with judgment, with accomplishment, and with feeling, and which are necessary to his social adaptation and are to be developed in reference to social ends. Together they contribute to make up a personality. Since personality is that in our experience which is of most worth, in fact, that only of which we can predicate absolute worth, it becomes a center for law and morals. My conception of another as a personality endowed with capacities for good will influence my conduct towards him. My estimation of values makes it apparent to me that I must not hamper, but rather promote his growth, if that alone in my experience has real worth. The moral conception of a kingdom of ends is thus reached which is not based upon the assumed fact of a universally legislative will prescribing laws to





all rational beings, but on the principle that each is a personality of absolute worth and therefore becomes to every other an object of supreme consideration.

It is not difficult to find a basis for an ethical equality underlying the Kantian Ethics. Each person is regarded as a rational being, endowed with membership in a kingdom of ends. Each is sovereign in this kingdom by virtue of possessing a universally legislative will. Duty applies "to every member of it and to all in the same degree."<sup>1</sup> Equality on the basis of rationality, and therefore subjection to moral law, excludes the animal world; which we found Bentham had included in the "chain of virtue." That Kant believed the moral law is the differentiating principle which raised man to a height infinitely above the brute creation is evident from this statement: "To suppose that the Moral Law within us is itself deceptive, would be sufficient to excite the horrible wish rather to be deprived of all Reason than to live under such deception, and even to see oneself. . . . degraded like the lower animals to the level of the mechanical play of nature."<sup>2</sup> It has been very common for humanity to acknowledge a close affinity with the animal world. A savage tribe most commonly worships certain animals as its deities and looks to some animal as its great ancestor. Egypt had her sacred animals. The stories told of Buddha indicate the high place they held in the East. Western thinking, however, has always tended to sustain the judgment of Kant, that there is a qualitative distinction which makes man supremely superior to the highest of the brutes, and the kinship in respect to origin maintained in the Darwin theory has been acknowledged without shaking this belief. This does not mean, however, that animals may not have a complex psychical life and are but the "mechanical play of nature," an idea which Kant probably adopted from Descartes.

Do we find in reason, however, and in the thought of duty, an adequate basis for a conception of equality? An attempt has been made to show that very few if any men are determined in their actions by the mere idea of universal law, and since reverence for law is the sole test of duty we are never sure that particular acts are performed through duty at all. We must therefore find some

<sup>1</sup> *Metaphysics of Morals*.

<sup>2</sup> *Philosophy of Law*, tr. by Hastie, p. 230.

other, or additional, elements in humanity, if we are to regard it as an end in itself. The fruitful conception that each person is an end in himself depends, according to Kant, on the assumed fact that each is a rational will which is universally legislative. The correctness of this characterization of human nature was tested in the applications of the first formula, a principle which was found to be an impossible guide to human conduct. The function of reason is to discriminate between the various inclinations that present themselves as motives, and to estimate their values, but reason itself as a form can never serve the will as a motive. When a man says, "I will act according to reason," he means he will select that end which reason shows to be of the highest value. In reason, regarded as a power or a so-called mental faculty, we find the greatest differences among men. All have not like powers of judgment and of discrimination in the determination of values. But reason so regarded is only a part of human nature. It is but a part of that less precise but supposedly richer term, *personality*.

Exponents of a doctrine of personality not only accept the notion of man as an end in himself, as contained in Kant's practical imperative, but enlarge upon it. The idea that each is a personality endowed with capacities capable of development but always in conjunction with a like development of others must remain, it would seem the very corner stone of ethics. Here, indeed, is a word which carries with it an ethical concept of equality. Man as an end in himself, as a being of absolute worth, possessing the promise of unlimited possibilities, is a personality. We cohabit in a dynamic and a progressive world. Our estimate of the worth of men can by no means be limited to the actual which they present. The most unattractive appearances may screen untold potentialities. There is no one to whom we can refuse the conception of personality. There is no class which can appropriate the title to itself alone. "Personality," says Professor Dewey, "is as universal as humanity; it is indifferent to all distinctions which divide men from men. Wherever you have a man there you have personality, and there is no trace by which one personality may be distinguished from another so as to be set above or below. It means that in every individual there lies an infinite and universal possibility, that of being a king and priest."<sup>1</sup>

<sup>1</sup> *Ethics of Democracy*, Philos. Papers, Univ. of Mich., 1888.



In Kant is an overemphasis of the rational element in human nature and a consequent tendency to individualism. His society is an aggregate of rational atoms, whose bond of relationship is found in common subordination to an impossible system of universal laws. They are not life of one another's life. The primal fact is not the relation between individual and society, but the relation of the individual to universal law. He failed to reach a truly organic conception of society and therefore to attain an adequate idea of ethical personality, because the idea of personality cannot be grasped apart from social relations.

Kant's formula, which insists that humanity shall be an end in itself and therefore always an object for supreme consideration, was doubtless an inspiration beyond his own theories, and has contributed much to acknowledge the right of personality to the central place in law and morals. His own emphasis, however, appears to be on law rather than on personality: e. g., a man has supreme worth because he has a universally legislative will; a correct standard of conduct is that which is fit to become a universal law; the end of the state is to secure the greatest harmony between its constitution and the Laws of Right;<sup>1</sup> the greatest problem of the human race is to found such a civil society as will realize law everywhere.<sup>2</sup> Apparently a person is made for law rather than that law gets its meaning through personality.

Nevertheless, strong emphasis is placed by Kant on the development of the latent powers of the individual as an object of education and of the state. He shared in the conception of education that became common in his later life and which is generally associated with Pestalozzi, that of the "harmonious development of all the powers." In the *Ueber Pedagogik* he speaks of the child as possessing genius which nature furnishes and education must grow, "by developing his natural gifts in their due proportion." Also in the *Natural Principle of Political Order*<sup>3</sup> he dreams of a universal Cosmopolitan Institution "in the bosom of which all the original capacities and endowments of the human species will be unfolded and developed."

But what are the powers of the individual the development of which is of such great importance? They are nothing apart from

<sup>1</sup> *Philosophy of Law*, p. 173.

<sup>2</sup> See Bonar, *Philosophy and Political Economy*, p. 278.

<sup>3</sup> *Principles of Politics*, p. 25.

a social environment. The individual helps to make society and at the same time his activities are performed in response to social needs. These so-called powers have no existence apart from the ends to which they are directed. Individual and society can be logically distinguished, but can not be separated. They are but the termini of an interactionary process which must be viewed as unitary. The individual grows through participation in social activities. Through a social sympathy he advances into a wider life. The end of education as "the harmonious development of the powers of the individual" can have no meaning if society is conceived as atomistic, but it is full of meaning if we adopt the organic conception. We can know such powers or capacities to exist only by knowing the direction they take, their use, and their accomplishment. It is therefore evident that all of an individual's activities are social. All are to be rated in a scale of ethical values. The aim of a good life and therefore of education is to get into right relations with men. But the term ethical should not be taken in a narrow sense. It applies to all fields of activity. We must get rid of the notion that actions possessing moral worth are only those which focus about certain religious institutions. Service is the test of the worth of conduct. All industrial life must be conceived as ethical. The labor of the street cleaner is not undeserving of respect and may rank higher morally than the giving of charity.

## V. ROUSSEAU, BENTHAM, AND KANT

The eighteenth century saw the culmination of an individualism that had been developing since the beginning of the Renaissance. We have observed the unreality of this individual; that detachment had made him a mere abstraction. Also that the organic idea allows of a truer conception of the individual, that of a personality, a being which has no meaning apart from the whole and which yet, as an individual, has a nature to be realized, and must be assumed to have absolute worth. This modern doctrine of personality is, however, very largely the result of the work of the three writers we have considered. Each directs attention to the individual and emphasizes his worth and his claim to consideration. It is true that they differ in opinion as to where the real good of man is found. The significant fact is, however, that the good of the individual in some form is taken as the thing of fundamental importance. Rousseau's doctrine of natural rights is meant to be an ethical conception. The right to life, liberty, and participation in sovereignty is based in human nature itself. Bentham believed that the individual's supreme wish was for happiness; therefore let him have happiness. Happiness became the end of morality, religion and politics. To Kant however the greatest debt is owed, because by making man a member of a kingdom of ends he approaches the nearest to an organic conception.

What we think the individual to be will largely determine for us what the state ought to be. The most difficult problem we have to face is to secure an adequate conception of the individual self. The conception of the isolated individual has its corollary in that of an atomistic society. Having given the individual, how are we to build up the social union? Rousseau's answer is by means of a social compact, a theory which became known through Hobbes and popularized in a different form in the eighteenth century. In the *Social Contract* the members of the prospective society recognize that each has interests both different and the same as those of others. They agree to cancel where necessary the diverse interests in order to make secure the common good.

In this way freedom and protection is guaranteed to each through the power of the whole. The nineteenth century has decried the social compact in favor of the organism; but there is much truth in the agreement theory and much that is wanting in the organic conception. The term organism as applied to society has not yet been well defined. The superiority of the latter term is in showing that society is not a mere aggregate of individuals brought together in an artificial manner; that it throbs with life and tendencies; that it possesses continuity and growth. The analogy with the animal organism whose actions are determined from a common center is, however, very imperfect and indeed misleading. The parts or organs of an animal have no other than a functional existence; they are nothing more than a means for carrying out the purpose of the whole; they are without individuality of their own. The members of society, on the other hand, are individuals, they are ends in themselves. Society has no power to think or will apart from its members. Though society is conceived as in some sense an organism the individual must remain the prominent fact; he is by nature a being of independent self-activity. It is possible however that future writers on political philosophy will discard this term in favor of a better. An organism requires at least that its parts play freely one into the other and co-operate in the attainment of a certain end. Mutual helpfulness and not antagonism would characterize the relations between its members. Capital and labor are recognized as necessary factors in modern industrial life. They are necessary to each other, and they co-operate in the attainment of the common end of production. Moreover, the whole society is vitally concerned in this production. A coal strike in Pennsylvania is an injury to the entire country. So far we have the conception of an organism. On the other hand, society presents us with a picture of struggle. Group is arrayed against group. Strong and bitter tension is the order of the day. A stable society is maintained through the mutual compromise of group interests; or, in other words, through the agreement to sacrifice certain diverse interests for the sake of a common good. Representatives of capital and labor come together to agree on terms. The thirteen colonies entered into an agreement which was believed to be for the general welfare. But in each case the common good is prior to the agreement. Were it not first recognized the agreement would not have been made. Therefore some

degree of organization must be prior to any contract. But agreements consciously entered into by groups within society are a necessary means to complete social organization. Society appears to be in a process of organization. The only way in which society can be regarded as a real organism is as an ethical ideal towards which the process tends. The ideal, however, cannot mean that there will ever be cessation of antagonism between the members. Antagonism makes for progress; opposition is an instrument of realization. Without opposition society becomes static and dead. The ideal will leave a field for individual activity and initiative. Progress has come largely from the organization of advanced ideas in individual centers, which have become clarified and woven into the social woof through opposition.

Rousseau did not mean the social compact to be regarded as historical. It is a figure to illustrate the formation of a just state. The notion of a social compact would have received far more sympathy in the nineteenth century if it had been an agreement not between individuals but between groups. It is said at once, "Man is a social creature; he has an instinct that impels him to the company of others; it is not his nature to be considered in isolation; he has always been one of a group." This is true; but my social instinct and interest is satisfied by association with my own group. It does not impel me to fraternize with the whole of society. It is evident then that there is still a place for the application of the contract theory if we take, as we must, the group as the social unit.

Another common and valid objection to the contract theory is that it attempts to construct society anew. We may arrange some form of social union, i. e., we may construct a state; but we cannot construct society. Empiricism has taught us the great truth that we must accept what is given. Society *in toto* is a given fact. It follows that there can be no opposition between the individual and society; even though there may be between individuals and groups or between either and the state. Even the expression 'Individual and Society' has no meaning because there is no such relation other than that of the abstract whole and part relation. You cannot remove the individual from society to make him a distinct term in the relationship without destroying society. A particular stave may have a definite relation to any or all of the other parts of the barrel, but it is not related to the whole barrel except as a mere part. Remove the stave and the

barrel is destroyed. But we can speak of the individual and an ideal society because the given individual not being a part of that society can be put into definite relationship with it.

The bond of social union in Rousseau's doctrine is the recognition of a common good. Just what this common good is at any time must be declared by the general will which is always sovereign. All participate in the sovereignty not as a result of contract but by natural right. Though Hobbes had supposed otherwise, sovereignty cannot be alienated or even delegated. Rousseau does not prescribe any particular form of government other than republican, which means that the general will shall rule. The general will may desire the form of monarchy, aristocracy, or democracy. The general will expresses itself in the assembly of all the people. Here alone is heard the public voice. This is the method of a New England town meeting. Rousseau's lack of practicality let him assume it was possible in the case of a large nation. When the people are so assembled they are asked to vote on measures proposed for laws according to their conception of what the general will is. From the counting of the votes is deduced the declaration of the general will.<sup>1</sup>

During the popular assembly the existing government *in toto* is considered as suspended in deference to the people. Apparently the right to the suffrage in the assembly is not restricted by sex or age or anything else. Sovereignty is a birth-right and carries with it the right to expression. Moreover, since all laws are for the time being abrogated, there would be no law operative to limit the voting qualifications.

By lodging the sovereign authority in the body of the people Rousseau emphasized the cardinal principle of democracy. In saying that every man by his very nature is born free and master of himself and cannot be enslaved against his will, he is giving expression to the inherent dignity of humanity. When, however, we look for practical suggestions in the formation of a state we find his doctrine insufficient. In fact, in the formation of his own state he passes away from the conception of an unhampered and free individual to the extreme of a communistic state, a state in which even a religious creed is prescribed and he who refuses to believe is punished with banishment. He furthermore leaves a loophole for continued tyranny by making the convocation of the

<sup>1</sup>*Social Contract*, Bk. IV, Ch. II.



peoples' assembly dependent upon the will of the existing government.

Movements for equality have taken different forms at different times, according to the idea that is uppermost in the public mind. The following are the principal forms in which equality as a social idea appears :

- (1) Political equality, which usually means the almost unrestricted extension of the voting privilege.
- (2) Civil or legal equality, i. e., equality before the law.
- (3) Economic equality or equality in wealth, or at least in opportunity.
- (4) Religious equality which allows to everyone the privilege to believe and worship as he chooses.
- (5) Moral equality, which prescribes a uniform standard of morals for all classes and both sexes.

The realization of the idea of moral equality depends, for the most part, on the gradual education of the race. This form of equality might be said to include all the others. Religious equality has become for the most part a fact. The justice of legal equality is so obvious that it is usually taken as axiomatic.

The problem in Rousseau's day was to secure political equality. This ideal has since been realized to a high degree in the form of universal suffrage. Credit is due Rousseau for recognition of the intimate relation between economic interests and political government. To be king over a people one must be king over the territory which they inhabit.<sup>1</sup> In brief, there cannot be in a good society conflict between property interests and the political power. In the formation of the contract each gives himself including his property. As with his liberty however, he gets it back, and his possession receives the sanction of the whole community. Only in this way do individuals obtain legitimate ownership. As owners, however, they are considered but as "depositories of the public property" and "the right which each individual has over his own property is subordinated to the right which the community has over all."<sup>2</sup> Still, it can hardly be inferred from this that Rousseau is a communist ; because he justifies the private ownership of the first occupant, provided however that he has only such a quantity

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<sup>1</sup>*Social Contract*, Bk. I, Ch. IX.

<sup>2</sup>*Ibid.*

of territory as is necessary for subsistence, and has made his title good by labor and cultivation. Rousseau is not specific in the treatment of this subject. In general, all territory is to be under the ultimate control of the community, but private property is justified because "the social state is advantageous to man only when he has some property, and no one has too much."<sup>1</sup>

Bentham was not concerned with the problem of a social contract. Theories of origins and first principles concerning rights were but empty speculations. Society is a given fact, and of course a government is necessary. The existing governments have in them elements both good and bad. If a representative system and freedom of speech are found to be good things, let them be adopted or continued. If the existence of an executive office not responsible to the people is a bad thing, let it be abolished. The test of value in all such instances is found in the happiness principle. Not in rights that are determined in nature, but in a happiness that ought to be, is found a criterion for the making of civil laws. That is the best form of government which can best contribute to the greatest happiness of the people concerned.

The only government which can have for its end the happiness of the people is a democracy, i. e., one that is by constitution responsible to the people. Bentham goes so far as to say that the situation of a monarch either absolute or limited, or the situation of a member of a hereditary legislative house, or that of a member of a representative body in a limited monarchy, is that of an enemy to the people; because such governments will not legislate on the greatest happiness principle.<sup>2</sup>

In a political state all power is either operative or constitutive. Constitutive power, i. e., the supreme or sovereign power, should reside in the body of the people. It is by its exercise that the operative power, i. e., the power which carries on the actual operations of government, is created and conferred. The operative power includes the various departments of government, legislative, administrative, and judiciary, all of which are presided over by agents of the people. In Bentham's state political equality is practically unlimited, since almost all adult males are eligible as electors. The happiness of the most helpless pauper is as im-

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<sup>1</sup>*Ibid.*

<sup>2</sup>*Constitutional Code*, Bk. I, Ch. XVII.

portant as that of the most opulent and powerful member of the community, therefore he should possess an equal share in the supreme constitutive power which is conceived as the means for the security of the general happiness.

It is with much reluctance that Bentham declares the female sex ineligible to the suffrage, i. e., from participating in the constitutive power. Their claims to the means of happiness is no less than that of men. In fact, "inasmuch as there are so many causes of suffering which do not attach upon the male, and do attach upon the female sex," the principle of equality would demand that they be favored above the male sex. He concludes, however, that the prejudices against the eligibility of women as electors is as yet too general and too intense to make wise the advocacy of that principle and might stand in the way of other improvements more probable of attainment.<sup>1</sup>

In this essay some discussion has already been made of Bentham's treatment of economic equality. Wealth is a means to happiness. And the nearer the distribution of wealth approaches to equality the greater will be the sum of happiness. This is true, on the principle that a given quantity of wealth will produce the greatest amount of happiness when it is given to the person or persons to whose already existing wealth it will bear the largest possible ratio. In spite of the shortcomings of this theory we found it to contain very important implications: (1) that a more equal distribution of the products of industry is desirable, and (2) that private property as an institution should be subordinated to an ethical principle.

Industrial developments since Bentham have shown the mistake in his supposition that equality would naturally follow under a government operated on the non-interference or *laissez-faire* principle. Security and freedom, he thought, are all that industry requires to make a state prosperous; and in a prosperous state there is continual progress towards equality. Let trade be unrestrained by politics and property will become diffused by a natural process. In America to-day, however, the tendency is not towards diffusion, but towards the concentration of wealth into the hands of corporate interests.

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<sup>1</sup> *Constitutional Code*, Ch. XV.

The *Constitutional Code* was written between 1820-32.

Kant follows Rousseau in the use of a social contract theory, but with him it is merely an idea of the reason which is involved in the conception of the state as an institution. Having given a rational individual, what are the steps to the formation of a state? The problem would be easy on the Kantian doctrine if a man were a purely rational being, unhampered with individual empirical interests. The state prescribes a system of general laws. These need be but the enactments of the universally legislative wills of the members who share in a common rationality and therefore could not disagree. It is however from the fact that man is an individual with private interests that the demand for a state arises. There are certain natural rights which each possesses by virtue of his humanity. These are, an innate freedom, the birthright of all; and a corollary of this, an equality which denies to anyone the right to exercise mastery over another, except by contract. The protection of these natural rights together with the right of private property, which grows out of them, makes necessary a state government.<sup>1</sup>

Each personality reveals itself in a physical existence. Each attaches to itself certain material objects in which its will is expressed and which are necessary to its freedom. In this way property arises with the distinction of mine and thine. The objects which I call mine are linked with my personality and partake of its inviolability. The right to my property implies the exclusion of other persons, but my claim to particular objects cannot be made irrespective of other persons. They, too, are personalities whose freedom and possessions it is my duty to respect.

The fundamental principle of the Science of Right is expressed thus: "Act externally in such a manner that the free exercise of thy will may be able to coexist with the freedom of all others, according to a universal law."<sup>2</sup> This formula appears at first to differ but little from that of Spencer: "Every man is free to do that which he wills provided he infringes not the freedom of any other man."<sup>3</sup> There is however a very important distinction, due to a difference in emphasis. Spencer centers his ideal in the free individual who does as he pleases and regards law

<sup>1</sup> *Philosophy of Law*, p. 56, (tr. by Hastie).

<sup>2</sup> *Ibid*, p. 46.

<sup>3</sup> *Essay on Justice*, Ch. VI.



as a restraint, or at best as a necessary compromise. With Kant, however, the emphasis here as elsewhere is upon law. Freedom is to be had through law. "*Nur das Gesetz kann uns die Freiheit geben.*" Moreover, law is not perceived by the self-conscious being as a restraint, because it is of his own making. He is conceived as prescribing the law according to his rational nature; and therefore, as willingly imposing limitations upon his own actions through respect for the rights of others.

Although each person must be conceived as an end in himself, he has at the same time a particular existence with certain empirical belongings and is necessarily limited by the particular existence of others. Each rational nature is conceived as acknowledging the right of other individuals when claiming his own; i. e., when I set aside some external thing as mine I debar another person from its use, and this implies the reciprocal obligation on my part to abstain from what is his. It is not supposed, however, that each individual's reason can prescribe just the limitations of his property right. To determine this a state is necessary. It is also necessary to secure for each the enforcement of his right. To Kant the private right is the natural right. It includes primarily the innate right to freedom, a freedom in so far as this can coexist with the freedom of all, according to a universal law; and the corollary of this, a right to equality in self-mastery; no one can be another's master except by contract. These rights are natural in the sense that they proceed from a rational principle which is in each man. To guarantee to each his rational right and its outcome in a property right a state is necessary. The principle of this transition given is as follows: "In the relation of unavoidable coexistence with others, thou shalt pass from the state of nature into a juridical union constituted under the conditions of a distributive justice."<sup>1</sup> Property and other rights exist prior to the civil state, being determined by the rational natures of individuals as such; but these rights are merely provisional, i. e., they cannot have the sanction of public law except through a political power. It is obligatory upon all to enter into the social union and to have determined by law what shall belong to each.

All social contracts, says Kant, are established to promote in common some chosen end. The contract which takes shape in the civil state has as its end, "the realization of the Rights of Men

<sup>1</sup>*Philosophy of Law*, p. 157.

under public compulsory laws, by which every individual can have what is his own assigned to him and secured against the encroachments or assaults of others."<sup>1</sup> A public law is the act of a public will and this can be no other than that of the whole people. No particular will can be legislative for a commonwealth. The suffrage is allowed to all those who possess civil personality. These are the active citizens and are characterized by independence or self-sufficiency. The passive citizens include all women and children and such men as work for masters. A majority of the peoples' votes or of their delegated representatives must be taken as expressing the terms of the compact.<sup>2</sup>

From this fair promise of republican government we turn to a despotism almost equal to that of Hobbes. We are reminded that the social compact is merely an idea of the reason. Its practical value consists in the influence it is assumed to exert on the ruler and his subjects. Unlike the scheme of Rousseau there is no actual assembling of the people, and the ultimate authority is not placed in the people, but in the ruler. Nor have they by their suffrages placed him in office. The right of the existent sovereign to rule is accepted as a fact. The idea of the compact serves to remind the legislator that he ought to enact such laws as *might have arisen* from the united will of the people; and to admonish every subject to regard the law *as if* he had consented to it of his own will. Under no circumstances, however, should the people resist the actual law. Their duty is to obey. "It is the duty of the people to bear any abuse of the supreme power even though it should be considered to be unbearable." "There cannot even be an article contained in the political constitution that would make it possible . . . in case of the transgression of the constitutional law by the supreme authority to resist or even to restrict it in so doing."<sup>3</sup> The people have only legislative influence. The sovereign ought to rule in accordance with the idea of the social compact; i. e., to make such laws as he thinks would meet the approval of the people. But if he fails to do so, the people must not rebel. Rebellion is absolutely prohibited.

There is, however, one privilege allowed to the people which was denied in the commonwealth of Hobbes. They may freely

<sup>1</sup> *Principles of Politics*, p. 34, (tr. by Hastie).

<sup>2</sup> *Ibid.*, p. 45.

<sup>3</sup> *Philosophy of Law*, p. 177, (tr. by Hastie).

but respectfully express their opinions. The liberty of the press is the sole palladium of the rights of the people.<sup>1</sup> In fact, it is by this means that the sovereign learns what is the general will; and *in idea* it is because he represents the general will that he is sovereign. But the exercise of this privilege must be in keeping with reverence for the existing constitution.

No people is safe where the ultimate appeal is not to its own body. Under an autocrat of less wisdom than Frederick the Great the reduction of a people to serfdom would be the probable result of the Kantian scheme of government. Moral but not political freedom would remain. The subject could exclaim, with Epictetus, "God hath made me free; I know his commands; after this no one can enslave me." But he must not refuse to obey a legal law however unjust. There is no surety that the sovereign will choose to act in the spirit of the compact. Kant's theory would have been more consistent, as well as more serviceable, if after emphasizing the worth of man by dilating upon certain natural rights, he had guaranteed the defense of those rights by making the sovereign responsible to the people.

From this actual state, with its possible evil consequences, we turn to the ideal state, i. e., one where the idea of the social compact is realized and all laws are in accordance with the general will of the people. The general will is conceived as determined by a majority of votes. Equality in civil personality or political equality is almost universal among men.<sup>2</sup> The suffrage is denied only to criminals and to those who work for masters, and are therefore not self-dependent. The latter class would include, e. g., the plowman and the resident tutor, but not the farmer or the school master. But they have always the possibility of becoming active citizens. Inequality in citizenship, however, due to the dependence of the passive citizens upon the will of others, is not inconsistent with the liberty and equality of the individuals as men. Though laws are conceived as enacted by the expression of will of the active citizens only, the passive citizens in their natural rights have an equal claim to consideration in the determination of legislation.

Private ownership of land, Kant regards as a necessary condition to the ownership of external things in general. The sov-

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<sup>1</sup>*Principles of Politics*, p. 57.

<sup>2</sup>*Philosophy of Law*, p. 167.

ereign is conceived as the supreme proprietor of all the land but he may hold none of it in private possession. Private property in the soil belongs only to the people, taken distributively and not collectively. Its division among them is determined by the sovereign according to "conceptions of right."<sup>1</sup> Just what "conceptions of right" may mean in this instance is not told; therefore we can get from Kant no light on the subject of economic equality. He is not a communist. Still, no property can be held in private capacity by any corporation, class or order, and transmitted hereditarily without the willing assent of the sovereign, who is supposed to represent the general will.

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<sup>1</sup>*Philosophy of Law*, p. 82.



## VI. CONCLUSION

To say 'man is a being of absolute worth,' is to express a very simple principle. All else that comes into human experience, in so far as it is valued at all, is valued relatively; i. e., in relation to the end which it serves. Man as an end in himself, concerned with the growth of his capacities into a perfected character serves as an ultimate standard for the valuation of things.<sup>1</sup> His capacities are essentially social; the means as well as the justification of their realization must be found in the conception of a common good. Character cannot be perfected in isolation; nor can it leave quite out of consideration the whole of society. All are presented to it in some way as a part of its problem. Its development must come from participation in and contribution to a common good. From this view-point, what meaning can be attached to individual rights? A right implies at least two things, (1) a power or capacity on the part of the individual, and (2) a willingness on the part of society determined by the conception of a common good that such power should be expressed. A right therefore cannot exist apart from society nor can it be exercised except in accordance with a common good. The capacity of an individual to identify his own good with that of the whole society determines his character as a moral being. It is only as a moral being that he can be said to have rights. The notion of natural rights included in the idea of the social compact differed from this conception in very important respects. There a "natural right" was something which existed anterior to society and to protect which society and its laws came into being. In the latter conception the right co-exists only with society and finds its justification in reference to a moral end. Laws cannot be deduced from "natural rights." "A law is not good," says T. H. Green, "because it enforces 'natural right,' but because it contributes to the realization of a certain end. We discover what rights are natural only by considering what powers must be secured to a man in order to

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<sup>1</sup>This is not intended as an argument submitted in proof of a thesis; but rather as the statement of an ethical belief.

the attainment of this end. These powers a perfect law will secure to their full extent. The consideration of what rights are natural (in the only legitimate sense) and the consideration what laws are justifiable form one and the same process, each presupposing a conception of the moral vocation of man."<sup>1</sup> "Rights are derived from the possession of personality; i. e., the capacity which man possesses of being determined to action by the conception of such a perfection of his being as involves the perfection of a society in which he lives."<sup>2</sup> . . . . "The capacity on the part of the individual of conceiving a good as the same for himself and others and of being determined to action by that conception is the foundation of rights."<sup>3</sup> "There can be no claim on society such as constitutes a right, except in respect of a capacity freely (i. e., under determination by conception of the good) to contribute to its good."<sup>4</sup> "There ought to be rights because the moral personality—the capacity on the part of an individual to make a common good his own—ought to be developed; and it is developed through rights; i. e., through the recognition by members of a society of powers in each other contributing to a common good, and the regulation of those powers by that recognition."<sup>5</sup>

The above passages may be summed up in the following propositions: (1) Personality is primarily the capacity for being freely determined by the conception of a common good. (2) A right is derived from personality; it implies the exercise of those powers of the individual which can be exercised in accordance with the common good; i. e., in relation to a moral end. (3) Laws coexist with rights for the attainment of a moral end; i. e., for the realization of a common good in which all individuals find their ideal good. . . . . A system of perfect laws would have as its aim the regulation of external conditions in such a way as to make possible the realization of all moral rights. The laws of any people at any given time are indicative of the heights which its moral consciousness has attained.

If we accept the above conclusions regarding the relations of the individual in society as an approximation to truth, the con-

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<sup>1</sup>*Lectures on the Principles of Political Obligation*, § 20.

<sup>2</sup>*Ibid.*, § 27.

<sup>3</sup>*Ibid.*, § 29.

<sup>4</sup>*Ibid.*, § 154.

<sup>5</sup>*Ibid.*, § 26.

structive importance of the three writers we have considered will be found in their contributions to it. All recognized a common good for society. It is necessary to the idea of social contract in Rousseau and Kant, and likewise to the greatest happiness principle of Bentham. But the organic relation of the individual with the common good is not recognized even in Kant. This is correlative with the somewhat isolated notion of the individual, a conception, however, which was a necessary step to secure freedom from the dead weight of tradition. The conception of the individual is however pre-eminently moral in its intent. He is the thing of supreme consideration, his supposed "natural rights" and his happiness are to be the objects of all legislation. It is consideration, too, characterized by universality or equality. Rousseau included all in the sovereignty because all had "natural rights" to be maintained. The rights of those whom Kant excluded from the suffrage were equally sacred in the determination of legislation. Each was an end in himself by virtue of his humanity. For reasons of present expediency Bentham denied the franchise to women, but believed them entitled to even a greater share of the means of happiness than the male sex on the ground of greater suffering. In the right to happiness "everyone is to count as one; no one for more than one."<sup>1</sup>

The above considerations have had the utmost to do with the development of the more modern doctrine of personality, an ethical idea which assumes the absolute worth of man and supplies the only possible basis for a conception of social equality.

"There is no absolute equality," says Eisler. "Equality (Gleichheit) is absolute similarity, undistinguishableness in respect to quality and quantity."<sup>2</sup> Two things cannot be equal in all respects, i. e., absolutely equal; because they would then be identical. The mere fact that things resemble each other implies that they differ in something. If we assume two peas to be entirely alike in size, color, weight, etc., we have two contents different in position, though apparently not in quality. But if we are to regard differences in position, i. e., in space and time relations as qualities belonging to the attributes of contents, even the two peas will be

<sup>1</sup>See Bonar, *Philosophy and Political Economy*, p. 234.

<sup>2</sup>*Wörterbuch*.

qualitatively distinct. Objects are, however, probably never found in nature so much alike as to be different only in space or time relationships. No two blades of grass are just alike. The microscope reveals distinctive differences in grains of sand. When it was the fashion to read philosophy in royal society, it is said that the knights and ladies about the French court amused themselves in hunting after leaves or twigs that appeared exactly alike in order to refute the statement of Leibnitz, "There are never in nature two beings which are exactly alike and in which it is not possible to find a difference."<sup>1</sup> It is not reported that they were successful. When things are said to be equal, we have to ask, as did Aristotle, "Equal in what respects?"<sup>2</sup> Things are equal only in respect to their common elements. If a thing is defined as the sum total of its qualities (Locke's definition of substance) the greater the number of like qualities between two things the greater will be the degree of equality or the nearer the approach to an absolute equality. Still, it is not the mere number, but the essential qualities and uses of a thing that afford a basis for comparison.

An object which possesses many attributes will be linked with many different associates at the same time, because it possesses the elements which are fundamental to membership in the several groups. A man is in the continuum of space because he has an extended body; he may belong to the Republican party by virtue of his political principles; and to the Catholic Church through his religious beliefs; and to the negro race by the color of his skin. Furthermore, he may be large or small in body; bright or stupid in mind; honest or dishonest, skilled or unskilled; all these and innumerable other attributes are influential in fixing his group relationships, and add to the complexity of modern society. A man may be equal to another in one respect and very unlike him in others. Children within the same families often show the utmost differences in temperament and ability. Some men are born political leaders; others are followers in this region who, by native ability, lead in art or science. There are others in all vocations who are most serviceable as assistants, but this, too, is an essential function. We have no norm for evaluating proportionately these various abilities and services. All are essential, but they cannot be said to be either equal or unequal. A human

<sup>1</sup> *Monodology*.

<sup>2</sup> *Politics*.



being possesses a vast number of attributes. The greater the number and diversity of the attributes the more difficult becomes the comparison and the more impossible the determination of equality.

In the connotations of man, however, we must distinguish between the essential and the non-essential. If we find one fact in the life of man of such overwhelming importance as to overshadow other attributes, and that this is a fact common to all men, in it alone can we find a basis for universal equality. It has become the modern fashion to scout the doctrine of equality as the vagary of a sentimental dreamer, one Jean Jacques Rousseau. With a wave of the hand the new doctrinaire settles the matter with the question, "Don't you see that men are most unequal?" and he thinks inequality is for all time established. This would be true if equality were but an arithmetical and a static conception; if it were but a matter of computation and comparison of the visible qualities which human beings present. There will always be inequality in men's abilities and attainments. This is a law of nature and one that lends to social cohesion, since diversity is necessary to unity. Equality is, however, an ethical conception; it distinguishes man (including all men) as the thing of moral worth in the known creation, and involves his good as the object of attainment. All help to constitute a dynamic world. The good of man cannot be expressed in static terms, neither can it be in retrogression; so we must think of it as a progressus, as a growth, as an expansion into something higher. Potentiality is the main category for ethics, is the great fact of life and the hope of the world. We cannot limit in any man the potentialities for betterment nor deny his latent ability for membership in a perfect society. Potentiality must be placed among the foremost connotations of a conception of personality.

There is thus a fundamental equality among men to be found in an ethical idea. It is based on the notion that every member of society is an end in himself and must be assumed to possess by his human nature absolute worth. Accepting this doctrine as true, what influence should it have in the determination of legislation? A good law will contribute to a moral end. This end is no other than the development of the potentialities of the individual to contribute to and participate in a common good. Personality so conceived becomes the determining center for laws as well as

morals. That constitutions and laws have their justification in moral conceptions is not a new doctrine. The Declaration of Independence is based upon it. The framers of this declaration believed in it. "We hold these truths to be self-evident—that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness, . . ." They (the people of America) would assume "among the powers of the earth the separate and equal station to which the laws of nature . . . entitle them." The above are, in their intent at least, strictly ethical conceptions and should be so interpreted. These statements in the famous declaration are being decried nowadays, owing to the obvious inequalities among men in mental ability followed by inequalities in wealth and attainments. They are said to be "out of date." They are out of date in so much as such terms as 'law of nature,' 'natural right,' 'natural equality' are found wanting in expressing the relation of an individual to an organic society. What they did, however, was to emphasize the worth of the individual and to dignify humanity. The end sought was a moral one. Let the above propositions, that men are by their common humanity equal, that they possess inalienable rights, among which are life, liberty and the pursuit of happiness, be given a moral interpretation (and no other is possible) and the Declaration of Independence remains the most remarkable of historic documents. That certain moral principles in the eighteenth century were looked upon as so reasonable and necessary as to have become "natural" indicates the advanced stage which the growth of the social consciousness had reached. Probably some of the unrealized ideals of the present will one day be so far attained as to be called "natural." Properly speaking, we have no laws of nature which can determine ethical values. Therefore the appeal of the American Fathers was not to a law of nature, but to an ethical law. Rules of moral conduct can not be based upon natural laws, except perhaps by the Stoic and by him only because he first conceived of all nature as itself divine.

It is true that so far as is shown in the Declaration no attempt was made to work out sufficient definitions of the terms liberty and equality as to make them compatible with one another. It was not seen that some approach to an equality in the means of living as would be demanded by equality in human nature was

inconsistent with a *laissez-faire* doctrine of freedom. What we need is new definitions of these terms in keeping with a highly organized society. Liberty there must be. It is necessary to individual moral growth, and to social progress. Development can never be forced from the outside, because it depends upon self-activity. It is a strong argument for democracy that however well a paternal government may be conducted it can never allow the self-realization to the governed which might come to them through initiative and responsibility. Liberty is the law of life, since life is growth and growth is from within. Each has capacity peculiar to himself by which he may contribute to the common good. From the conception of an unrealized self comes liberty as a moral requirement; but likewise comes equality, since it is in the conception of common potential personality we find equality to reside. All the members of society are such selves, whose expansion into the wider life is equally indispensable to the complete realization of the ethical ideal. He who acts freely in accordance with the recognition of this situation is the moral person. Laws should be made to facilitate the attainment of moral ends and to restrain those persons who attempt to act in an individual capacity in opposition to the common good. It is not circular reasoning to say that the development of the individual is necessary to the common good and that the common good determines the development of the individual, i. e., what capacities shall be encouraged. It is consistent with the organic relation of the individual and society.

Political equality in the form of an approximation to universal suffrage, the extension of which Carlyle called the "unchaining of the devil,"<sup>1</sup> will remain the necessary palladium of the liberties of the people. However desirable government by experts may be, to use John Stuart Mill's phrase, we must trust the intelligence of the people to secure periodically such experts. History has shown that although an aristocracy may be very patriotic in one generation, it does not remain so. Moreover, the use of the ballot is a form of activity which contributes to self-realization. Democracy is in keeping with the nature of men as men.

Legal Equality means more than the prohibition of class legislation, and that all individuals are equal theoretically before the laws. We shall never have legal equality as long as one disputant

<sup>1</sup>*Shooting Niagara; and After.*

with greater wealth can (without a valid reason) retard the execution of justice through the power of appeal, knowing that his poorer opponent has not the means necessary to continue the dispute. And on the other hand, as long as a jury of poor men feel it as their first duty to decide against a corporation as such. Legal equality is much dependent upon economic equality.

Wealth is power in whatever sphere it operates. Without some approach to an economic equality there can be no genuine political or civil equality. What is a just distribution of the products of industry, and what is a just apportionment of the nation's wealth is a problem too great to be entered upon here. Various theories have been given, such as a distribution according to needs, or according to services; the abolition of inheritance; or of private property, etc. Opponents of such theories have had but little difficulty in pointing out their flaws. It is true, however, that if man as a personality is the thing of most worth, industrial relations must be more and more determined by that conception. Equality as an ethical idea does not demand an equal division of wealth. It would be impossible to maintain such a condition, even though it were not undesirable. Private property is, nevertheless, a social institution; it is created and protected by society and must be used in accordance with the common good. There is no wealth apart from society, it is intimately involved in the social organism; it is a necessary instrument of ethical realization. The justification for private property as of individual rights must be found in reference to an ethical end. Corporate wealth must be used for the benefit of the people, whether 'owned' by them or not. We no longer trust the administration of government to an aristocracy, but industry has come more and more under aristocratic control; i. e., into the hands of the few. To secure the operation of industries, including of course transportation, in accordance with the common good, by bringing them under a more or less direct regulation by the people, i. e., by making the operators responsible to the people, is the problem of economic equality.

The most common form in which equality is advocated is equality of opportunity. But opportunity for what? Let each man, it is said, have a chance to use his talents, to make a career for himself. Surely each man cannot be let alone to make what career he chooses. Given a land of opportunities such as America has furnished, with the *laissez-faire* principle of administration,



and inequality is the inevitable result. Equality of opportunity is soon at an end. There can be no permanent equality in opportunity, unless the individual in the use of his talents is determined by the conception of a common good. In her educational system America is unique among the nations of the world by providing free education from the kindergarten through the university. Besides abundant primary and secondary schools each state has its university holding out opportunity to its youths, in most cases quite free of tuition and in no case is the fee more than nominal. The plan is to encourage the individual, to let him develop his talents. These institutions have the ready sanction of the people, otherwise they would not exist. At the same time we hear daily of the selfish encroachments of wealthy corporations; it is said that they exploit the people through gaps or imperfections in the laws. To utilize these imperfections, i. e., to manipulate the laws, they employ the best legal talent to be had. This legal talent receives its first stimulus and development in the universities. And criticism must not, of course, be limited to one profession only. If a state providing a university supported by the people could know in the case of any youth who applies there for knowledge, that he will use his talent in opposition to the common good, and does not prevent such youth's admittance, that state would be performing to that extent a suicidal act. No state can afford to encourage the development of talent to be used against itself and any talent immorally directed is so used.

Individuality must ever be encouraged; it is in keeping with the ethical concept of personality, with man as an end in himself. The most useful as well as the greatest men have been the most individual; they have been marked by originality, initiative and self-dependence. Each person has his peculiar capacities and through these attains his best self-realization. Freedom is the prime condition of growth. Moreover, freedom is necessary for social progress, just as equality is necessary for cohesion. "All progress," says Fichte, "is due to unselfish devotion to ideas." He was not aware of the importance of natural selection as a factor of progress; but he was right in giving a high place to conscious selection—devotion to ideas. Great ideas have their birth in free individual minds. Nevertheless, the development of the individual's powers should be determined by a conception of the common good. No power can be exercised, no act can be performed by

the moral individual, which leaves that quite out of consideration. The 'common good' can never be precisely defined. It is not a fixed, but a dynamic conception. It can never determine in detail just what powers the individual shall exercise, or just what are his 'rights' in every given situation, any more than a boundary line can be fixed between the individual and society. The state, however, exists for the furtherance of the common good. It is thus a means for the ethical realization of its members. It should be determined by the ethical concept of equality, i. e., that each person has a human life to live and a moral destiny to realize. Self-realization, it is true, is a matter of inner growth; each one must help himself. Nevertheless, many a flower has been dwarfed through coming up by chance in the shade of a rock.

We shall never have a *perfect* democracy until every member of the state is imbued with the spirit of the Roman poet: "*Homo sum: humani nihil a me alienum puto.*"<sup>1</sup> This line contains the essence of democracy with its attendant attributes of liberty, equality, and fraternity. Democracy has been defined by Mazzini as meaning, "The progress of all through all under the leading of the best and wisest."<sup>2</sup> In a perfect democracy each one would regard every other as in some way a part of his problem. And there would be no decreased opportunity for individual careers. America has faith in her children; therefore she provides abundant individual education. By America we mean the state, that which stands for the common good. There shall be no mute inglorious Miltons, no unknown Cromwells. Their talents shall be developed and add to the sum of good. The genius of an Emerson or of a Shakespeare needs a free atmosphere. No earthly power can dictate to such men what they shall be. What guarantee, however, has America that her educated children will use their power in accordance with the common good, that they will not turn and rend her? In the first place, democracy itself is founded upon an enlightened principle and as we have seen upon an ethical principle. This godmother who presided at its baptism will remain as a guiding star in its growth. The general spread of enlightenment through education will produce a higher average citizenship. Where each citizen is an integral part of the sovereignty, education is the indispensable condition of the right use of his privilege.

<sup>1</sup> Terence: "I am a man; I regard nothing human as indifferent to me."

<sup>2</sup> *Thoughts upon Democracy in Europe.*

If history shows democracy to be the highest consummation of the world's political experience, knowledge of that fact will tend to maintain it. Moreover, knowledge adds to efficiency in the vocation and therefore to a more stable type of citizen. Nevertheless, knowledge from our so-called general education and specific technical education does not tend necessarily to create in the student an appreciation of responsibility to the state. Education must become more and more moralized, it must have as its object the socializing of the individual, i. e., to create in him a ready disposition to be determined by a conception of the common good. It is our problem to maintain a democracy in a society which has already reached a high degree of complexity and in which a pulsation originating in one group sends a quiver throughout the whole. Moral or social education will try to understand society with its many problems, and to further the progressive realization of a national ideal as well as the personal realization of all its members.

In the foregoing pages we found certain equalities and inequalities to be fundamental in human nature.

(1) The doctrine so common in the eighteenth century that 'men are by nature equal,' if taken to imply an equality in natural powers and abilities is obviously so false that a refutation of it is unnecessary. Knowledge of the inherent inequalities of men has been intensified too by the modern study of biology and the laws of heredity. If palpable differences in abilities are admitted and equality is yet maintained as a 'natural right' the term 'natural right' has to be explained. We found that there can be no 'right' for the individual apart from the common good of society, and therefore that 'natural rights,' the doctrine of individualism, rights which each individual is supposed to hold prior to his existence in society, must give place to moral rights. Moral rights are those which the individual holds in relation to ends and which must accord with a conception of the common good. Neither can there be any natural and equal right to participation in sovereignty since sovereignty too must be determined by an end to be attained and this end must be first defined. Not natural right but expediency has been chiefly instrumental in the extension of the franchise.

(2) Equality based upon sentience. In the feelings of pleasure and pain can be found a deep and fundamental equality which has afforded perhaps the chief motive to philanthropy. Recognition of the feelings common to humanity led Rousseau to a doctrine of equality and Bentham to the principle which is fundamental in his system. While Bentham denied any place to 'natural rights' including a right to equality he nevertheless believed that in the claims to happiness 'each was to count for one and nobody for more than one,' which means that in his mind justice was really prior to the greatest sum of happiness.

(3) With Kant the fact of common sentience is unimportant while an equality is found in "rational nature," a combination of reason and will. This marks off distinctly the human from the brute creation which was found to be included in the group of sentient beings. It is true that every human being has some reasoning ability, though the degree differs widely among different persons and races. Kant's interpretation of rational nature, that each is a universally legislative will, and its corollary that men are equal in a common subjection to duty we found open to grave criticisms. But the claim that everyone by his human nature is to be regarded as an end in himself and therefore as possessing absolute worth, though but the assumption of a theory of ethics, furnishes the basis of a universal equality as an ethical idea. Kant's assumption of the absolute worth of man led him to a belief in the innate natural right of the individual to liberty and equality. The criticism already made on the meaning of a 'right' applies again at this point. The failure to recognize the intimate organic relation of the individual with society made possible the claim of individual rights apart from a conception of a common good. Kant's doctrine of the worth of man contributed immediately however to a conception of personality, an idea which at least implies in the words of T. H. Green, "the capacity to be determined by a conception of the common good." The terms *personality* and *common good* have been freely used in the above pages. A further attempt will here be made to define them.

That there are many 'goods' which men hold in common will be readily granted; but that we may speak of one supreme common good, even in a single state in devotion to which the individual finds his own highest good and in which the best interests of individuals do not clash, is a more difficult propo-

sition to maintain. The fact of any self-governing society, i. e., one in which the individual members co-operate voluntarily and not through coercion, implies necessarily the recognition of a common good. Even if some state now having this character, i. e., a democratic state, was first brought into existence by force, nevertheless the principle holds to-day as long as there is voluntary co-operation. That collective action is able to further individual good is but another way for saying that people have interests in common which can best be served by co-operation. The most frequent illustration of this is found in the distribution of the means and comforts of living, which is embodied in our extensive industrial system. But if the term 'common good' has the meaning and significance which T. H. Green gives it, it cannot be limited to a material distribution; such things are but its incidents and furnish a motive only to the calculation of a somewhat immediate comfort.

We are reminded here of a criticism by Bosanquet on the *general will* doctrine of Rousseau.<sup>1</sup> The general will is that which wills the common good. Rousseau makes a fundamental distinction between the *general will* and the *will of all*, but he really makes sovereign not as he supposes, the general will, but the will of all when this happens to represent the unanimous private interests of the individuals in the group. Common good to Rousseau therefore is 'common,' but it is not universal. This distinction becomes clearer in an illustration. The Athenians received a sum of revenue from certain silver mines, which it was the custom to distribute among all the citizens. It then had the character of a 'common good,' because the private interests of all were served. At the proposal of Themistocles, however, each agreed to forego this private advantage and to devote the annual revenue to the building of a fleet. This fleet later fought at Salamis, and thereby saved the institutions of the Greeks and permitted the development of a free Europe. It is characteristic therefore of the *universal good* that it is not only common to all but it has permanence in time. It is the peculiar function of the institutions of society to be conservers of the universal good. The 'common good' to Rousseau and other exponents of individualism is apparently exhausted in the private interests of the individuals of the given society. It does not have the character

<sup>1</sup>*Philosophical Theory of the State*, Ch. V.

of a universal which takes form in an enduring institution and which may demand the sacrifice of private interest common to even all the members of the given group.

The conception of common good in the writings of T. H. Green has the same two attributes: it must be both permanent and common. Man, who thinks of himself as permanent, conceives the idea of a well-being of himself, which shall not pass away with this, that, or the other pleasure.<sup>1</sup> It is the demand for an abiding satisfaction of an abiding self,<sup>2</sup> but the idea does not admit of a distinction between good for self and good for others.<sup>3</sup> The reason conceives the good as common to all and to the nation and thus there has arisen an order of life which habituates the individual to the subordination of his likes and dislikes to social requirements. Green assumes as a fact the identity of the social good with the highest good of the individual. It is with him a matter of reason. Reason has a function of union in the life we know; through it we are conscious of ourselves and of others as ourselves; it is therefore the basis of society because it establishes equal practical rules in a common interest. Institutions are the form and body of reason.<sup>4</sup>

The above reasoning may appeal but little to the citizen who grumbles about paying his taxes and views all requirements of the state with suspicion. In fact *complete* identification of interest between the individual and society, the belief that all activities of the individual are at all times best for himself when best for the whole can be maintained only on certain moral considerations grounded in a Metaphysics. Nevertheless, to use the words of Fairbrother, "considerations of a common good however limited in range, are the guiding influence of the ordinary citizen in his habitual obedience to civic institutions."<sup>5</sup>

It is probable that he who makes complaint of his tax assessment does so not because he objects to the principle of co-operation that is implied, but to a supposed unjust distribution of the burden or a misuse of public funds. Of course in many concrete situations just what is to be the content of the 'common good'

<sup>1</sup> *Prolegomena to Ethics*, § 203.

<sup>2</sup> *Ibid.*, § 234.

<sup>3</sup> *Ibid.*, § 235.

<sup>4</sup> *Ibid.*, § 204.

<sup>5</sup> *Philosophy of T. H. Green*, p. 133.

cannot be readily determined. Different opinions arise through different degrees of enlightenment and through personal bias. The vision of the ordinary citizen is too limited to see the full significance of the institutions under which he lives. Nevertheless it is in the fundamental institutions of society, the home, vocation, school, church, and state that the 'common good' finds its embodiment.

We accepted as the fundamental fact of our theory of ethics the belief in the absolute worth of man. Man has a social nature which can be best realized by participation in the experiences that are conserved and systematized in the above institutions. These considerations will influence our conception of the content of the common good in any given situation.

Personality has been defined as including the capacity to be freely determined by the conception of a common good; it might be said a capacity to be just, were it possible to define justice. Personality connotes certain elements having to do with the ordinary human relations that are developed through participation in the above institutions. These institutions are the conservers of the best experiences of the human race. They are the social moulds or habits through the instrumentality of which the individual finds his most consistent development. They tend to make possible the freedom necessary to the self-realization of his moral nature. While ideally embodiments of the socially excellent, the concrete forms of these institutions in a given situation may be quite unworthy of the idea of the absolute worth of man; i. e., they may not be contributory in the maximum degree to the realization of the good of all concerned. Therefore reform is always necessary if not in the forms at least in the working out of these institutions; in fact reform, or social reconstruction, is but another name for progress. The reformer aims at the realization of a more correct idea of the common good in some given situation. Sometimes the rectitude of his claim is so manifest as to involve no antagonism. At other times the accepted standards or sanctions repulse the innovation and the individual stands out in opposition to his group. Such opposition is always inevitable in a progressive society since progress comes mainly as the result of individual initiative. If the new proposal is well founded, i. e., if it really aims at a higher condition of common good and has at the same time the capability of adaptation to the given situation, it is likely to be adopted

sooner or later. Society progresses according to a dialectical principle. That a well-founded opposition passes over in the course of time into a higher synthesis is illustrated in the frequent occurrences of history in which society has martyred its prophets and later accepted their doctrines.

It is evident that there can be no simple and ultimate conception of a common good and certainly not one that can become the possession of all or many of the individuals in society. People are moved by the thought of a good that is more or less immediate, i. e., motives to actions are necessarily identified closely with the given situation but this situation includes chiefly relations of the individual with others and is therefore ethical in character. What form the common good demands in the given situation may be evident, though the individual has no conception of a meaning of the good as ultimate. In fact any notion of an ideal good has value only in so far as it can serve as a working hypothesis in concrete situations. The value of conceiving of society as an ethical organization in which there is an equality by virtue of indispensableness to the given whole as is demanded by the ethical idea, is found in the fact that this idea furnishes a social end to be attained, which is in keeping with the acknowledged worth of the human being as such and will tend to influence the conditions of the social organization so that ethical personalities may come into their development and realization.

The objects to be attained in a democratic education cannot be precisely defined until we learn the real meaning of democracy, and that we have not yet done. The ethical idea that each individual is a person to whom must be accredited in some sense absolute worth, at least means to the educator that each child endowed with capacities for social life is an individual problem to be studied, and means to the State that each child is worthy of education. It is necessary to discover what are his peculiar gifts and capacities that these may be developed for the sake of both himself and society. Since there is no equality but rather the greatest diversity in natural gifts, no fixed and uniform treatment can be prescribed for a group selected at random. Whatever democracy will come to mean it will at least never sanction the insistence upon an inert uniformity such as would discourage a useful and peculiar talent in any individual. On the other hand,



life in groups where the pupil learns how to live with his fellows, is indispensable in democratic education.

It is especially true in a democratic society that the leader is he who serves. Each individual is in a sense a leader in his special sphere; i. e., he is a leader by virtue of efficiency in his particular calling. The leader is really the expert because his claims to leadership must be based on expertness in social service. This is true of any calling whether that of shoemaker, poet, or statesman. The necessity for expert knowledge and guidance in government as in all the departments of life becomes more recognized because of the frequent failure of the direct rule of popular assemblies in matters requiring expert knowledge. In the scheme of education outlined in the *Republic* the individuals of exceptional talent are selected into a distinct group and educated to the highest possible degree while the great majority remain ignorant. If education were merely to develop leaders there would be no reason for rejecting the Platonic plan. But a belief in the worth of man as man implies that each has a potential gift, the development of which is not only valuable to the State but is the condition of the individual obtaining his own highest good, which again is part of the common good. Education endeavors to discover and to develop the useful capacity. Useful capacities are those which contribute to social service, i. e., to a common good: but since in a dynamic society there can be no fixed and immutable conception of the whole common good, abundant opportunity for originality and initiative should remain to the individual: in fact only those capacities can be considered useless, and whose development is therefore immoral, which are manifestly indifferent or opposed to social service. The worthy leader is he who has insight into the meaning of social service, i. e., has an advanced conception of the content of the common good; and at the same time has the ability to so control operations in society as to further the realization of his ideal.

The idea of worth, the person being the point of departure, is taken as initial by Professor Maccunn, and from it are made certain deductions, moral, political, and industrial. We discern, says this writer,<sup>1</sup> in persons even with meagre and stunted opportunities a strong and struggling principle of moral life which commands respect; and as a matter of fact, we do expect and demand of them moral worth. The respect so commanded

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<sup>1</sup> *Ethics of Citizenship*, Ch. on Equality.

must be expressed in action. Moreover the principle of moral life which gives to a man worth, requires opportunity for expression. A certain minimum of opportunity must be secured by civil right. For the same reason political right is demanded, this being but an additional opportunity or instrument whereby the potential moral worth of the man becomes the realized and practical worth of the enfranchised citizen, and whereby is opened up to him the larger life of active citizenship. The same initial idea must carry its influence into industry. Worth and grinding poverty are ill bedfellows. Political rights are only a satire to one whose life is an absorbing struggle for a livelihood. There is a demand, therefore, not only for improvement in the distribution of the products of industry, but for the opportunity to secure vocational efficiency.

If the above position is well taken the idea of the potential moral worth of all persons is one fundamental idea which will not be overlooked by the moral educator. That this idea is already constantly in evidence in the world is indisputable; e. g., while state expediency might well justify the present movement against child labor that certainly has not been the controlling motive with those who have taken the initiative. It is but the repetition of platitudes to say that no workman can be expected to display enthusiasm for our civil institutions unless he has been educated to an appreciation of their meaning, and that the active citizenship implied in the extension of political rights must remain a farce unless the voter is able to grasp with some intelligence the great issues involved. Of course education in matters political, civil, and moral, cannot be limited to an early period of life. It has been too much the custom to think of education as limited to the period of childhood and youth. The idea of man as a moral personality admits of no fixation in his realization, so education is really, as Plato suggested, a lifelong process. From the industrial view-point this same initial idea would appear to demand that each have the opportunity to attain that vocational efficiency which is necessary to maintain himself in the proper human relationships. Moreover the vocation, which demands the greater part of one's energy and thought, must become, whatever it may be, the main source of one's ethical realization. These demands on the educator follow not only from the idea of personality as it has been conceived but from the idea of democracy. Democracy is based on the principle of voluntary co-operation, and education is neces-

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sary that the individual may intelligently co-operate. A workman should not only be efficient but should have some intelligent notion of the significance of his work to the whole industrial and social organization. Some conception of the common good of society to which his own life is contributing must be realized in his consciousness ; otherwise he acts blindly as a machine. This demand becomes the more imperative with increased minuteness in the division of labor, which reduces to a minimum the knowledge necessary for his vocational efficiency and makes the industrial organization a mere mechanical arrangement of independent parts rather than a process characterized by intelligent co-operation. Unless the workmen see the significance of their work, i. e., unless they have a conception of the social whole and their own place in it, the idea of democracy will remain unrealized and we shall continue to live under the rule of minorities skilled in the manipulation of majorities.

One of the dangers against which democratic education should guard—a danger that increases with the growth of cities and newspapers—is the development of the mob spirit and with it the demagogue. Sudden contagions arise and sweep over smaller or larger areas resulting in measures quite contrary to what experience has shown to be wise. This may be as much in evidence in the unexpected landslide in a presidential election as in the illegal execution of a criminal. Persons whose powers for accurate observation and description have been trained, and who have some knowledge of the historical evolution of society, will not lend themselves to the mob spirit.

If the question is approached from either the side of the person or of the organic whole it is evident that an individual human being exists in a condition of most intimate dependence with a vast multitude of others. This fact of an organic society can be presented to the child in numerous illustrations. And not only does he enjoy to-day a 'good' in common with his fellows but this 'good' is seen to extend back in time and therefore has the attribute of permanence. History, if well taught, cannot fail to arouse an appreciation of institutions, since these represent the toil and best experience of centuries. The thought of continuance carries with it responsibility for the future. History makes clear what the present owes to the past and also that it has obligations to the future. The pupil can thus see himself as a distinct part of a

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social process which involves intimate relations not only with his fellows, but with the past and coming generations.

Still education should be national in character. The aim of American education is to produce good Americans while that of France is to produce good Frenchmen. The schools become channels for the development of the national genius. The idea of the unity of a democratic community should be emphasized in democratic education, a unity that is consistent with and includes the utmost diversity of function. That differences in talent and abilities should result in certain material inequalities should be seen to be inevitable and not inconsistent with democracy. A mistaken notion of democracy readily gives rise to a spurious assumption of equality which finds expression in irreverence and bad manners. Plato, after describing the democratical man as licentious, one who lives from day to day in the gratification of the casual appetite, following now one fancy and now another, adds that such is the life of "a man whose motto is liberty and equality."<sup>1</sup> It is evident that we need to teach meanings of the terms liberty and equality very different from those held by the Greek philosopher, since these terms are indissolubly associated with the birth, traditions, and ideals of the American nation.

An ideal can be realized only if believed in deeply; for apathy and scepticism whether in the individual or in a nation have never accomplished results. America can hope to attain the realization of her ideals only in so far as these take the form of a widespread and determined conviction.

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<sup>1</sup>*Republic*, Bk. VIII.

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